

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF

IN RE: LEHMAN BROTHERS HOLDINGS INC., ET AL.,
Debtors.

DEPOSITION OF PETER SHERRATT
VOLUME I
Friday, November 13th, 2015
AT: 1:00 p.m.
Taken at:
Hogan Lovells
50 Holborn Viaduct
London
EC1A 2FG
London
United Kingdom

CONFIDENTIAL

Court Reporter:
Chris Lang
Accredited Real-time Reporter

Friday November 13th, 2015

(1:04 p.m.)

THE VIDEOGRAPHER: Here begins the videotaped deposition of Peter Sherratt. In the matter of, In Re: Lehman Brothers Holdings Inc. et al., in the United States Bankruptcy Court, Southern District of New York, case number 08-1355 SCC. Today's date is November 13th, 2015 and the time is 1:04 p.m. The video operator today is Wendy Viner. The video deposition is taking place at Hogan Lovells, 50 Holborn Viaduct, London EC1 UK.

Counsel, would you please identify yourself and state who you represent.

MR. JOHNSON: I am Shane Johnson from Hogan Lovells representing Dr. Thomas Marsoner.

MR. VAN TOL: Pieter Van Tol from Hogan Lovells representing Thomas Marsoner.

MR. HORWITZ: Maurice Horwitz, Weil Gotshal Manges, representing Peter Sherratt.

MS. ALVAREZ: Denise Alvarez, also with Weil Gotshal Manges.

THE VIDEOGRAPHER: Thank you. Could I ask the notary to please swear in the witness and we can proceed.

PETER SHERRATT

having been Sworn, testified as follows:

BY MR JOHNSON:

Q. Okay. Good afternoon Mr. Sherratt. So I want to

1 start with your background at Lehman. So could you
2 please tell me what Lehman entities employed you and
3 what were your titles?

4 A. I joined what was then Shearson Lehman Brothers in
5 1986. And joined as legal counsel as part of a three
6 person legal department, two of which were qualified
7 lawyers, and we also had a highly talented paralegal.
8 I became a senior legal counsel during the next several
9 years. And then in 1991 I became the European legal
10 director, which was the most senior lawyer in Europe.
11 In 1994 I became managing director and also had
12 responsibility for other matters. I had joined the
13 management committee. I had responsibility for
14 compliance, for internal audit, for corporate
15 communications and legal. I also spent a lot of time on
16 the commitment committee and new products committee. So
17 I had a broad range of duties by 1994. They were
18 extended to include Asia, and by the way when we say
19 Europe we also mean Middle East and Africa, in reality.
20 So in 1998 I had responsibility for what you might call
21 legal and related matters for Europe and Asia.

22 Then in 2007, I became a vice chairman of the firm.

23 Q. The firm, by the firm, you mean Lehman Brothers?

24 A. Lehman Brothers.

25 Q. I am sorry?

1 A. Lehman Brothers.

2 Q. Not any particular entity in Lehman Brothers?

3 A. Well, I was employed, obviously legal entities
4 within the group are very different pre bankruptcy and
5 after bankruptcy. The employer, which was Lehman
6 Brothers Limited, was just the normal service company.

7 THE COURT REPORTER: Sorry, with the rain could I ask you to
8 keep your voice up a little bit.

9 A. I am sorry, of course.

10 So the employment letter is from October 1986 so
11 I think we would have to go back into the file. I don't
12 think it was called Lehman Brothers then, but it was
13 a predecessor company to Lehman Brothers Limited. That
14 is just the service company. It seconds the employees
15 to many other companies within the Lehman group.

16 Q. So you considered yourself an employee of Lehman
17 Brothers generally?

18 A. Yes, absolutely. With responsibilities that were
19 focused on Europe. But obviously as a manager in the
20 firm you think about the firm as a whole, especially
21 when you think about the long term issues, you know,
22 presented to the firm.

23 Q. So isn't it correct that you served multiple roles
24 at Lehman Brothers?

25 A. Indeed. I mean as I have said, those sort of

1 titles, and at different times I tended to get involved,
2 or I mentioned crisis management. So when a large
3 crisis comes along, and I expect we will talk about this
4 later, because Formula 1 was obviously one of those, but
5 for example when the Russian debt crisis hit in 1998 it
6 was my responsibility to try to recover as much as we
7 could from the Russian debt problems. So yes, as chief
8 legal officer it was my duty to take on matters which
9 the chief executive of Europe felt was appropriate, you
10 know, for someone, you know, with my experience.

11 Q. And was one of those roles as an officer of Lehman
12 Brothers Holdings?

13 A. Well, yes. That is very true. I think I was
14 a vice chairman of holdings Inc. right at the very end.

15 Q. Okay.

16 A. But obviously I thought about the firm as a whole.

17 Q. Sure.

18 A. I tended to think about Lehman Brothers rather than
19 Lehman Brothers Holdings Inc. That is obviously the top
20 firm.

21 Q. And you were an officer of Lehman Brothers Holdings
22 Inc.?

23 A. I believe I was, as vice chairman of the firm.

24 Q. Okay. I would like to mark this as exhibit 1,
25 please.

1 (Exhibit 1 marked for identification)

2 Q. And this is the Lehman Brothers 2007 annual report?

3 A. Mm-hm.

4 Q. And do you see the Bates stamps in the bottom

5 right-hand corner, the Marsoner and then a number?

6 A. Yes I do.

7 Q. Would you please turn to page 606.

8 A. Yes.

9 Q. Do you see your name listed in the column that says

10 "other officers"?

11 A. Yes I do.

12 Q. And do you see it also says under your name "vice

13 chairman Lehman Brothers Inc."?

14 A. Yes I do.

15 Q. Okay, thank you. Wasn't it common for members of

16 Lehman Brothers' senior leadership to serve multiple

17 roles with different Lehman entities?

18 A. Yes, absolutely.

19 Q. And in your work, isn't it true that you regularly

20 communicated and worked with individuals at Lehman

21 entities in the US and in Europe?

22 A. Yes.

23 Q. Including other officers, and members of Lehman

24 Brothers Holdings Inc's senior leadership?

25 A. Yes.

1 MR. HORWITZ: Objection, form.

2 Q. Now, as far as F1, when did you first begin working
3 on Lehman's F1 investment?

4 A. Well, I first came across it in connection with the
5 commitment committee consideration of a loan to Kirch so
6 that would have been in 2001, I believe. But the F1
7 investment if you mean at what point did I become
8 involved in the F1 investment directly, that would have
9 been in 2002. Because before then, we were simply
10 a lender to Kirch, who had made the investment in
11 Formula 1.

12 Q. And when you became directly involved in 2002, what
13 was your role?

14 A. I was part of the team to try to recover what we
15 could from the loan to Kirch.

16 Q. And who else were you working with at the time on
17 the F1 investment?

18 A. A big team. Ruggero Magnoni, Vittorio Pignatti
19 came over, Joe Cohen spent a lot of time on it. And we
20 obviously had a significant group of people working on
21 it. The head of the German office was involved. He
22 would accompany me to meetings in Bavaria, because
23 Bayerische Landesbank, as you know, is a half state-owned
24 company.

25 Q. And who was that?

1 A. Well, I can only read what you can read. I mean,
2 I am not sure what you are asking me for here. It does
3 do that, according to how I read it.

4 Q. Were you not involved in those discussions to have
5 Dr. Marsoner?

6 A. Yes, indeed, I was, I would have been very happy
7 with Marsoner representing the three banks.

8 Q. And this is October 2002?

9 A. Yes. I remember, because Thomas and I got on well
10 and I respected him.

11 Q. And you thought he was knowledgeable about F1?

12 A. Yes.

13 MR. JOHNSON: Please mark that as exhibit 3.

14 (Exhibit 3 marked for identification)

15 Q. This is an October 22nd, 2002 email from Patrick
16 Bierbaum to Peter Sherratt, Victoria Pignatti and
17 Stephen Sleight, at Lehman Brothers, copied Thomas
18 Bernard, Steve Hannan, and Patrick Schmitz-Morkramer.
19 And are you familiar with this document?

20 A. Well, this is the same as my last answer.
21 I haven't seen this since I left Lehman. I may well
22 have seen this at the time. It is very likely I would
23 have read this at the time.

24 Q. And do you see that you are listed as an addressee
25 on this email?

1 a broad ranging question. Are you happy if we talk
2 a little bit about that? Are you talking now about
3 2002?

4 Q. I am talking about over the time that he advised
5 Lehman Brothers --

6 MR. HORWITZ: Objection to form.

7 Q. -- on F1, did you think he was a valuable adviser?

8 A. I thought it was always interesting to see.

9 Q. That is a yes or no question.

10 A. I am just trying is to give what you I thought.

11 Q. That is not what I asked for. I said isn't it true
12 that Dr. Marsoner was a valuable adviser on F1?

13 MR. HORWITZ: Objection to form.

14 A. I wouldn't be so harsh as to say no.

15 Q. So yes?

16 A. It is, the valuableness is not a yes/no situation,
17 is it, it is a spectrum. Some people are more valuable
18 than others. You can have some value, not very much or
19 you can have a lot of value. It is a spectrum, isn't
20 it, of value. It is not a yes/no situation, so if you
21 allow me to explain the context, I can help you get to
22 the truth here.

23 Q. Well, he had some value as an adviser on F1?

24 MR. HORWITZ: Objection to form.

25 A. I believe that he did have some value.

1 Q. Okay, thank you.

2 A. As an --

3 Q. That is good, thank you.

4 A. Okay.

5 Q. And isn't it correct that you knew Dr. Marsoner was

6 a paid adviser to Lehman?

7 MR. HORWITZ: Objection to form.

8 A. That he was a paid adviser to Lehman. Yes, I did

9 know that, just not in relation to Formula 1.

10 Q. That is not what I asked. You were aware

11 Dr. Marsoner had agreements to serve as an adviser with

12 LBEL, Lehman Brothers Europe Limited?

13 A. Yes, I didn't make that specific question in

14 relation to LBEL, because you don't tend to in terms of

15 precise legal entities when you are involved in

16 an investment bank across the firm. But, yes, if you

17 had asked me which company entered into a consultancy

18 agreement with Thomas then I would have guessed that it

19 was LBEL.

20 Q. Okay, but you were definitely aware that he had

21 advisory agreements with Lehman Brothers?

22 A. Yes.

23 Q. Okay. Did you sign any of Dr. Marsoner's advisory

24 services agreements?

25 A. Not that I recall, but I would have to check the

1 A. Yes I do.

2 Q. If you turn to page 28 of exhibit C do you see that
3 it is signed by Vittorio Pignatti on behalf of Lehman
4 Brothers Europe Limited?

5 A. Yes I do.

6 Q. Okay, thank you. Were you aware that this
7 agreement included success fees?

8 A. I mean frankly I wasn't aware of any details of
9 this agreement at the time, as far as I can remember.

10 Q. You didn't help negotiate it?

11 A. I don't recall doing so. I think that would have
12 been a lawyer inside my department who would have been
13 involved, rather than -- I wouldn't normally get
14 involved in consultancy agreements.

15 Q. So --

16 A. This isn't something that I kept a big record of at
17 the time. And I don't recall.

18 Q. You didn't negotiate the commercial terms,
19 certainly, then?

20 A. I don't think so, I don't think so.

21 Q. And then you never determined the success fee that
22 Dr. Marsoner would be paid under the advisory
23 agreements?

24 A. Personally, no. I don't recall doing so.

25 Q. Do you see in paragraph 1 of the 2004 agreement

1 that it says:

2 "Dr. Marsoner will assist Lehman Brothers and the
3 Lehman Group."

4 A. Yes I do.

5 Q. So he wasn't just advising Lehman Brothers Europe
6 Limited, he was advising the entire group.

7 MR. HORWITZ: Objection to form.

8 A. Sorry, are you asking me for a legal interpretation
9 of this language?

10 Q. Well, it doesn't, does it, say Lehman Brothers
11 Europe Limited?

12 A. It says "assist Lehman Brothers and the Lehman
13 group".

14 Q. Okay.

15 A. Was it a question around that, or?

16 Q. That is it.

17 A. Okay.

18 Q. On the F1 reinvestment, is it true that in late
19 2005 CVC Capital Partners bought a controlling interest
20 in F1?

21 A. Yes, they certainly made the offer in 2005. I am
22 just trying to remember the exact closing date, but it
23 was the end of 2005 that they came into Formula 1, yes.

24 Q. And isn't it correct that Vittorio Pignatti worked
25 on the reinvestment for Lehman Brothers?

1 A. He may well have done. I mean certainly all of
2 these things are team efforts. I don't recall Vittorio
3 being involved, but he may well have done.

4 Q. And was Thomas Bernard involved?

5 A. Yes, absolutely. Thomas Bernard and Steve Hannan
6 and I had many conversations and had worked together
7 closely over the life of the Formula 1 investment,
8 because it was our job to manage that investment.

9 Q. And was Ruggero Magnoni involved?

10 A. Well, like Vittorio, they were on the investment
11 banking side, so as you will know, there was
12 an agreement put in place in which Lehman Brothers was
13 hired as an investment banking adviser. But there is
14 a slight but nevertheless significant difference between
15 managing the investment and advising on the managing of
16 the investment. And the role of Bernard, Hannan and
17 I was to manage the investment, of which Tom Bernard was
18 the most senior of the three of us.

19 (Exhibit 5 marked for identification)

20 Q. This is an email of November 26, 2005 from Thomas
21 Bernard to Steve Hannan, Patrick Schmitz-Morkramer and
22 Peter Sherratt.

23 A. Mm-hm.

24 Q. Are you familiar with this document?

25 A. Well, you say familiar, there was obviously one

1 meetings and went to see Bernie Ecclestone, and that
2 kind of management. And Vittorio, absolutely would have
3 been a very important, valuable person in all of this.
4 It is just that the work out team was really Bernard,
5 Hannan and myself.

6 Q. So Bernard's opinion on whether to reinvest or not
7 was very important?

8 A. Certainly important. Along with other senior
9 members of the firm, of course, the people more senior
10 to him. But it was important.

11 Q. And do you see in this email it says "If McLaren is
12 true, it is huge" from Thomas Bernard?

13 A. Yes, I do see that. Absolutely.

14 Q. Isn't it correct that McLaren was one of the oldest
15 active F1 teams?

16 A. Yes.

17 Q. McLaren has been a very successful F1 team, is that
18 right?

19 A. It has.

20 Q. Won a lot of races and championships?

21 A. Yes, it has.

22 Q. It is fair to say that McLaren is an important F1
23 racing team?

24 A. Yes, it is one of the important ones. Ferrari is
25 clearly the key one for the purposes of F1. But McLaren

1 is also, in general, an important team.

2 Q. It is important to the financial well being of F1

3 that they remain in F1?

4 A. It is it is one, as I said, it is one of the

5 important teams in F1. I mean F1 itself is a business

6 that survives comings and goings of teams, and it can

7 always do that.

8 Q. Isn't it correct that F1 is --

9 MR. HORWITZ: Let him finish the answer to the question.

10 MR. JOHNSON: I believe it was a yes or no question.

11 MR. HORWITZ: What was the question?

12 MR. JOHNSON: Is McLaren important to the financial well

13 being of F1.

14 A. It is one of the teams that is important to --

15 Q. Okay.

16 A. -- F1.

17 Q. Isn't it correct that F1 is more valuable with

18 McLaren as a team?

19 A. Yes.

20 Q. Isn't it correct that McLaren as well as other

21 racing teams had threatened to leave F1 and form their

22 own racing series?

23 A. They had, all of them at one point or another.

24 Q. And McLaren was de facto leader of these teams that

25 had threatened to leave?

1 MR. HORWITZ: Objection to form.

2 A. I am not sure about that. I think it is much more
3 complicated, I think, than that.

4 Q. Okay. But therefore it would have been important
5 to know whether McLaren would continue with F1 after
6 CVC's purchase, is that right?

7 A. It would be one factor. It depends on your point
8 of view about how attracted you are by the reinvestment
9 before you know that piece of information.

10 Q. Well, if McLaren had left F1, it would have been
11 less valuable, correct?

12 A. Yes, but you still might have reinvested.

13 Q. Okay, but it would have been less valuable?

14 A. True, but you still might have reinvested.

15 Q. I am just asking if it would have been less
16 valuable.

17 MR. HORWITZ: Asked and answered.

18 MR. JOHNSON: Has he answered it?

19 MS. ALVAREZ: Can we have the court reporter read back.

20 A. I am sorry, do you want the court reporter to read
21 it back, or do you want to ask the question again?

22 MR. JOHNSON: Well, I asked the question, your counsel
23 objected.

24 MR. HORWITZ: I think he has answered three times.

25 MR. JOHNSON: Is the answer yes?

1 "MR. HORWITZ: I think he has answered
2 three times.

3 "MR. JOHNSON: Is the answer yes?

4 "Answer: I think I will stand by my previous
5 answer."

6 Do you want me to continue?

7 MR. JOHNSON: Okay, that's fine.

8 BY MR JOHNSON:

9 Q. And had other teams, other racing teams left F1, F1
10 would have been less valuable?

11 A. Yes, in general, that's right. Again, you still
12 might have reinvested.

13 Q. Therefore it is important to know whether McLaren
14 would continue with F1 after CVC's purchase, is that
15 right?

16 MR. HORWITZ: Objection to form.

17 A. It was a factor, and that is why it was nice to
18 hear from Thomas that McLaren would be likely to stay.

19 Q. So the information that Dr. Marsoner provided about
20 McLaren was valuable?

21 A. It was useful, if you are on the fence it is
22 useful, of course, to hear information.

23 Q. And did you already know that information?

24 A. No, I didn't.

25 Q. Do you agree with Thomas Bernard that this

1 Q. Including LBHI?

2 A. Were they employed by LBHI, I don't know. That was
3 a matter for the US. As you will recall I was chief
4 legal officer for the areas outside the US. So
5 distinctions between -- if you are trying to trip me,
6 like, on whether it is LBHI or whether it is LBI or
7 LCPI, then I am sorry, I don't recall which entities
8 they were employed by.

9 Q. But you worked with officers of LBHI?

10 A. I worked with the individuals who may also have
11 been officers, but I didn't work with them because they
12 were officers.

13 Q. That is fine. You worked with them?

14 A. Well, you would have to give me the names --

15 MR. HORWITZ: Objection to form.

16 A. -- of the people and I would show you which ones
17 I had worked with.

18 MR. JOHNSON: Can we bring back the 2007 annual report?

19 THE COURT REPORTER: This one?

20 MR. JOHNSON: Yes.

21 BY MR JOHNSON:

22 Q. Page 606 again.

23 A. 606, right.

24 Q. I think you testified you worked Vittorio Pignatti?

25 A. Yes, I worked a lot with Vittorio Pignatti, yes,

1 over many years, before Thomas arrived, in fact.

2 Q. And do you see he is listed as an other officer?

3 A. Yes I do.

4 Q. I believe you said you worked Ruggero Magnoni?

5 A. Yes, absolutely, he is another person I respected
6 enormously.

7 Q. And do you see him listed as another officer?

8 A. Yes.

9 Q. And you worked with Jeremy Isaacs?

10 A. Yes, would it be helpful for me to go down the
11 entire list or you going to guess which ones I worked
12 with, which would you rather?

13 Q. Go down the list and tell me which ones you worked
14 on F1.

15 A. In relation to F1 specifically?

16 Q. Yes, F1.

17 A. Well, I recall one time in Munich, around the
18 Kirch, when Dick Fuld was involved, when he and I spoke
19 about it.

20 Q. And that is Richard Fuld, chairman and chief
21 executive officer?

22 A. Yes. Around F1 there would be issues in relation
23 to the valuation of F1, so I probably spoke to Dave
24 Goldfarb when he was CFO, and was in a senior finance
25 position. I probably spoke at some point with Joe

1 Gregory, on F1 I certainly spoke to Jeremy Isaacs on F1,
2 of course, because he was the chief executive officer
3 for Europe. I probably spoke to Ian Lowitt about F1 at
4 some point. Tom Russo, Chris O'Meara.

5 Q. I am sorry, what was the last one?

6 A. Chris O'Meara.

7 Q. Okay.

8 A. Ruggero, Vittorio, I don't recall speaking to
9 anyone else about F1. But bear in mind that it was
10 a very significant investment by the firm, so I could
11 not say for certain at this point, you know, ten years
12 on, you know, who exactly was involved.

13 Q. Okay. And you are aware that Pignatti and Bernard
14 asked Dr. Marsoner for his advice regarding the F1
15 reinvestment?

16 A. I am aware that they received advice. Um, I don't
17 know the situation as regards what they asked for, I am
18 afraid. I don't think I was party to those discussions.

19 Q. Do you disagree with Pignatti and Magnoni that
20 Dr. Marsoner should be paid for his F1 advice?

21 A. I don't believe --

22 MR. HORWITZ: Objection to form.

23 A. I don't believe at this point that it is right to
24 make a claim in relation to F1. I think if he had
25 wanted to be paid, expected to be paid, in relation to

1 Fl, that would have been agreed at the time and I think
2 he is too smart not to know that, so I do, I don't know
3 what Vittorio's and Ruggero's position is right now.
4 But it strikes me as unusual to say the least that we
5 should have a claim coming in now in relation to
6 something which happened so long ago.

7 Q. So your main issue with his claim is the timing of
8 it?

9 MR. HORWITZ: Objection to form.

10 A. I think timing reveals a more underlying problem in
11 the sense that I think if it had been intended that he
12 would have been paid any significant sum, then I think
13 everyone would have agreed that up front in the normal
14 way and then there would have been appropriate provision
15 made for it. And that is how any normal accounting, you
16 know, procedure is followed. That is a proper
17 procedure.

18 (Exhibit 6 marked for identification)

19 Q. This is a declaration of Dr. Thomas Marsoner that
20 was submitted to the US bankruptcy court which attached
21 affidavits from Vittorio Pignatti, Ruggero Magnoni, and
22 Tom Bernard.

23 A. Mm-hm.

24 Q. Turn to the last paragraph of Vittorio Pignatti's
25 affidavit, please.

1 A. Mm-hm. "He would have been paid..."

2 Q. Do you see that Vittorio Pignatti said that it was

3 his understanding that "Dr. Marsoner would have been

4 paid by Lehman Brothers for his services concerning the

5 F1 investment or I would not have asked him to help."

6 A. I can see that. Sorry, was there a question in

7 relation to it, or is it just whether I can see that.

8 Q. There will be, just a second.

9 A. Okay.

10 Q. If you turn to Ruggero Magnoni, the last paragraph

11 of his affidavit?

12 A. Mm-hm.

13 Q. Do you see it was said:

14 "It was well understood by the Lehman decision

15 makers that Dr. Marsoner's fees normally amounted to 10

16 percent of firm revenues."

17 MR. HORWITZ: Objection to form.

18 A. I can see that.

19 Q. But you disagree with Pignatti and Magnoni that

20 Dr. Marsoner should have been paid for his advice?

21 MR. HORWITZ: Objection to form.

22 A. Should have been paid at the time in what,

23 2005/2006 --

24 Q. No.

25 A. -- are you saying, or should have been paid at what

1 point? I don't quite understand.

2 Q. That he should have been paid when profits were
3 realized.

4 A. I don't think there was any agreement, so in my
5 work I was just used to having agreements and I was used
6 to situations where people were paid for things that
7 they had been, it was agreed that they would be paid in
8 respect of. I don't think there was any agreement, as
9 far as I know. I may be wrong, but as far as just I am
10 aware, there was no agreement to pay Thomas. But
11 clearly if there was another agreement somewhere else in
12 the firm then I would like to see it and I would respect
13 that.

14 Q. Did you have any role in server's acquisition of
15 Bawag?

16 A. I don't believe I did, but again, I might have been
17 aware of it. You are slightly catching me off guard,
18 Cerberus' investment in Bawag, did you say?

19 Q. Yes.

20 A. No, I believe Bawag was a client of, I may be wrong
21 on this, but I think Bawag was a client of Thomas' when
22 he was at Lehman, I am not sure. That is all I remember
23 of it. There are probably many details which if
24 I refresh my memory I would remember, but not now.

25 Q. Would it surprise you to learn that he was paid

1 a success fee for that transaction?

2 MR. HORWITZ: Objection to form.

3 A. Um, I have no, I don't know the background of it,
4 I don't know anything about it. So I think the way you
5 phrase your question is would I be surprised to hear he
6 had been paid a success fee. I am neither surprised nor
7 not surprised, you know, not surprised if you see what
8 I mean, I just don't know the context.

9 Q. Let me rephrase it slightly. Would you be
10 surprised he was paid a success fee on a transaction not
11 covered in an agreement?

12 A. That would surprise me. Normally you would have,
13 and that was the sort of ABC of consulting agreements,
14 you would write down the clients that the consulting
15 arrangement relates to. So that was one of the first
16 things that, when I started off as a junior lawyer,
17 I did some consulting agreements and naturally had
18 responsibility for them. One of the key things is to
19 try to avoid that kind of uncertainty. But, it would,
20 that would surprise me. But I don't know the
21 circumstances.

22 Q. Would it change your mind about Dr. Marsoner's F1
23 claim?

24 MR. HORWITZ: Objection to form.

25 A. Sorry, what would change my mind about Dr. --

1 Q. If --

2 A. Are you talking about a transaction which I know
3 very little about and don't I know the circumstances and
4 you are asking me whether that would change my mind in
5 relation to Formula 1?

6 Q. Well, you said earlier that your objection to
7 Thomas' claim is that it wasn't written in any of the
8 agreements, is that correct?

9 A. I think I said a number of things, but certainly it
10 was a -- you would normally expect a consultant to have
11 a list of clients and that would be the basis upon which
12 people would normally be paid, so that was my
13 understanding. Now, clearly if that didn't happen, then
14 that didn't happen. What can I say. But my normal --
15 if you are asking me what my state of surprise, or my
16 state of understanding about consultancy agreements is
17 concerned, then normally in a consulting arrangement you
18 normally list the clients that the consultant is going
19 to be paid in respect of, otherwise you have uncertainty
20 and it makes it very difficult to keep proper accounting
21 records.

22 Q. But you wouldn't have determined if Dr. Marsoner
23 was due a success fee?

24 MR. HORWITZ: Objection to form.

25 A. Not unless it related to something I was

1 specifically involved in. But no, his main contact
2 would have been investment banking and that is
3 completely natural, it wouldn't have been into the
4 legal, it wouldn't be into the chief legal officer.

5 Q. And that was Vittorio Pignatti?

6 A. Well, clearly as you have shown me earlier, he was
7 the principal contact for Thomas, so Vittorio Pignatti
8 would have been the natural person Thomas would talk to
9 about which clients to include in his agreement.

10 Q. And he would have decided that Dr. Marsoner was due
11 a success fee?

12 MR. HORWITZ: Objection to form.

13 A. He would decide which clients go into that
14 agreement. If you want to pay somebody outside of
15 an agreement, I would imagine, but I wasn't aware of
16 this practice, but I would imagine that he would need to
17 socialize that decision more widely, because clearly if
18 you pay somebody outside of your normal obligations,
19 then it is, you know, you would normally expect that to
20 be a wider decision than any one individual, especially
21 if it is any significant sum of money, clearly. There
22 would need to be quite a few individuals involved. You
23 know, no one person has autocracy to spend large amounts
24 of the firm's money, unless it is under a contract.

25 MS. ALVAREZ: We are hitting the one hour mark. You tell us

1 when is a good time, but we should take a brief break,
2 just a few minutes.

3 MR. JOHNSON: Yes, I have one or two questions on this point
4 and then I think that would be a good time to break.

5 MS. ALVAREZ: Okay.

6 (Exhibit 7 marked for identification)

7 BY MR. JOHNSON:

8 Q. This is an email from Vittorio Pignatti to
9 Jonathan Rouner, Lehman Brothers, copying
10 Christian Meissner; an October 13, 2005 email. Do you
11 see that this email says:

12 "Thoma's contract with me has expired and I am just
13 covering his expenses on projects that I approve. When
14 projects become real I agree with him on the % of
15 revenues he will be entitled to."

16 A. I can see that.

17 Q. Doesn't this contradict what you just said about
18 one person not deciding --

19 MR. HORWITZ: Objection to form.

20 Q. -- payment?

21 A. It says:

22 "... I am just covering his expenses on projects
23 that I approve. When projects become real I agree with
24 him on the % of revenues he will be entitled to."

25 Yes, of course he will say that but it doesn't mean

1 that he hasn't cleared it internally with the relevant
2 people. It's shorthand. He might say "I am determining
3 this" or he might say "we are determining this", it is
4 shorthand. Clearly as the principal contact point
5 Vittorio would be the natural person to figure out what
6 projects Thomas is working on. That would be completely
7 appropriate.

8 Q. Even if the contract has expired?

9 A. As the principal --

10 MR. HORWITZ: Objection to form.

11 A. As the principal contact point, if a contract has
12 expired, I mean, we are really dealing with
13 hypotheticals, aren't we, and you are asking me to put
14 myself in the position of Vittorio at that point.
15 I guess what I am saying is that Vittorio, my guess is
16 that if he is paying money or he is committing to large
17 sums of money by the firm which are not in a contract,
18 Vittorio, being a good team player as he was, would have
19 needed to have that agreed with other people in the
20 firm. It would be very rare for one person to say "I am
21 now going to make a large financial commitment", for it
22 not to be kept in any records, and then to say to the
23 firm "well, I just did that off my own back". It would
24 be pretty rare for someone to do that and Vittorio was
25 a very, very professional person.

1 he was CC'd on emails.

2 A. Because I was involved in the investment of F1.

3 Would you like me to go back through my involvement from
4 the start, or is that just a --

5 Q. No, no, that was it.

6 A. Okay.

7 Q. We talked about how Pignatti would potentially give
8 success fees. Were there any written guidelines for
9 contacting people such as Pignatti?

10 MR. HORWITZ: Objection to form.

11 A. Not that I recall.

12 Q. Okay. Now isn't it correct that Lehman Commercial
13 Paper Inc. was the Lehman entity used to reinvest in F1?

14 A. It was, it was the entity that had originally made
15 the loan out of fixed income. So that was, it was
16 an entity that was commonly involved in high yield
17 business and so it was the entity, I believe, that held
18 the shares in Speed, and therefore it made sense when it
19 sold those shares to be the entity to reinvest in Alpha
20 Topco.

21 Q. And that is a US entity?

22 MR. HORWITZ: Objection to form.

23 A. LCPI is a US entity. Are you thinking of Alpha
24 Topco or Speed?

25 Q. No.

1 A. LCPI.

2 Q. Yes, LCPI?

3 A. LCPI, yes, absolutely, yes.

4 Q. And Lehman Brothers Europe Limited didn't have any

5 interest in F1?

6 A. No, it was a -- obviously its employees were

7 obviously involved in advising on F1, absolutely. But

8 it didn't have a direct financial interest as an entity,

9 no, as far as I know. That wouldn't have been

10 appropriate, it was a service entity, LBEL.

11 Q. I believe you just mentioned one of these entities,

12 but are you familiar with Delta Topco Limited and Delta

13 Prefco Limited?

14 A. Yes.

15 Q. Is it correct that these companies hold the

16 ordinary shares and debt of Alpha Topco Limited and Beta

17 Topco 1 Limited?

18 A. I would need to go back to understanding the

19 structure of the Formula 1 group to tell you that. Are

20 you talking about as of now? Because -- or as of any

21 particular date, are you talking about? If you are

22 saying were they, was Delta Topco or Alpha Topco the top

23 group that held the Formula 1 business generally, then

24 yes.

25 Q. Okay.

1 A. That was the entity, Alpha Topco originally and
2 then Delta Topco were the entities that I joined as
3 a director and they were the entities that owned
4 Formula 1.

5 Q. And I think you just said that, but you were
6 appointed as a director of Delta Topco Limited and Delta
7 Prefco Limited?

8 A. Yes, I was appointed to what you might broadly call
9 the board of Formula 1, but it was the holding company,
10 the relevant holding company.

11 Q. And you were appointed by Lehman Commercial Paper
12 Inc.?

13 A. I think technically you were appointed by the
14 company, so you join the board of the company as
15 an individual. But I did that representing the
16 shareholder, which was LCPI.

17 (Exhibit 8 marked for identification)

18 Q. This is a motion made by Lehman Commercial Paper
19 Inc. in the United States bankruptcy case to sell shares
20 of Delta Topco Limited and Delta Prefco Limited. Could
21 you please turn to exhibit B. This is a draft
22 consulting agreement?

23 A. Yes it is.

24 Q. Was a final executed version ever entered into?

25 A. Yes, I did enter into a consulting agreement.

1 MR. HORWITZ: Objection to form.

2 A. I did, yes.

3 Q. If you will go to exhibit C.

4 A. Yes.

5 Q. It is a letter agreement.

6 A. Mm-hm.

7 Q. Lehman Commercial Paper Inc.

8 A. Yes.

9 Q. Did you execute a letter of agreement substantially
10 similar to this one?

11 MR. HORWITZ: Objection to form.

12 A. Did I execute myself? Um, this looks like
13 a statement in which they will nominate me as a member
14 of the board.

15 Q. Sorry, yes. Did you know if --

16 A. I think LCPI did nominate me, yes, absolutely, and
17 I was appointed by those boards. I think it looks like

18 Jack McCarthy may have executed this.

19 Q. And are you still a director of these entities?

20 A. No I am not, no.

21 Q. When were you replaced?

22 A. I resigned in 2012. Although I did resign also for
23 a period, if you want the full -- to be, give you full
24 detail on that, I had a short period after the
25 bankruptcy in which I dropped out of the board because

1 legal entities are of course incredibly important. But
2 in terms of the way that individuals dealt with each
3 other, especially when individuals were operating
4 themselves for several legal entities, they wouldn't go
5 round with one particular hat on and say "I am a LBL
6 employee" or "I am a LBI employee". That would be a --
7 that wouldn't be the normal course of business, because
8 it would be impractical, because there were hundreds of
9 Lehman Brothers companies.

10 Q. And so people, individuals at Lehman Brothers,
11 regularly shared information, even if they weren't
12 employed by the same legal entity?

13 MR. HORWITZ: Objection to form.

14 A. The sharing of information would depend on function
15 rather than form in terms of legal entity. So the legal
16 department's employee wouldn't share information to
17 a member of the trading desk if that information was
18 sensitive and related to legal issues. Equally a member
19 of the trading desk wouldn't share his trading book
20 information with someone in a different part of the firm
21 unless there is a specific legal reason. I shouldn't
22 say legal reason, a specific reason why it came within
23 his authority to share information. So sharing of
24 information is really done by function rather than by
25 the legal entity that the person is employed by.

1 Because if you had the legal entity as the determining
2 factor you would not be able to operate things like
3 Chinese walls appropriately, where you may have two
4 people who are employed by the same legal entity but
5 being in different parts of a, you know, having
6 different pieces of information which you may not want
7 to be connected together for legal reasons. So you have
8 to do it by form not by legal entity.

9 Q. But you personally, did you share information with
10 US employees?

11 A. I did, indeed it was my obligation to do so as a,
12 you know, I had -- there were senior employees in the
13 States and if they asked me for information it would
14 have been irresponsible of me to keep it secret from
15 them.

16 Q. So as a parent of LCPI, isn't it true that LBHI
17 also had access to the F1 documents?

18 MR. HORWITZ: Objection to form.

19 A. Are you talking pre bankruptcy now?

20 Q. Yes.

21 A. Would LBHI have -- well, LBHI is the overall group
22 company. So I am not sure LBHI probably ever requested
23 anything from LCPI, it may have done, but I think what
24 actually occurs in practical terms is that the senior
25 person, it might be the senior management, would ask for

1 information of more junior managers. It wouldn't be

2 a question of LBHI asking for LCPI for information.

3 Q. As a director of the Delta entities, you personally
4 had access to LCPI's F1 documents?

5 MR. HORWITZ: Objection to form.

6 A. So we are now talking about post bankruptcy. Did
7 I have access to LCPI documents? In general, no.
8 Naturally, I spoke to people who I think were probably
9 employed by LCPI, or related to LCPI, people like Jack
10 McCarthy. So naturally I talked to them, but I did not
11 have any access to LCPI records generally.

12 Q. How would you provide them advice if you couldn't
13 see any of their records?

14 MR. HORWITZ: Objection to form.

15 A. Because my role was to go to the board meetings of
16 Formula 1 and to understand what is happening, to engage
17 in conversations with CVC, to talk, to, you know,
18 understand what was happening. And where appropriate to
19 share that information with the relevant people who as
20 a consultant I sort of reported to, within LCPI. It was
21 not my role to run LCPI; I was a consultant. So I think
22 it would have been inappropriate for me to have had
23 access to all of the records, just as anyone advising
24 a company doesn't necessarily have access to all of the
25 records within that company.

1 F1?

2 A. No I don't, no, and never have done. You are
3 talking directly, there, are you, or are you talking
4 about do I have any interests in whether F1, because
5 clearly if I am working for a company and the company
6 benefits, that is good. So I have an interest in that
7 sense. I worked for Lehman Brothers and Lehman Brothers
8 profited from F1, so I was happy that it had profited.
9 But if you are saying did I have an interest in F1
10 itself, no I didn't hold any shares, I didn't hold any.
11 You know, Formula 1 certainly never paid me anything.

12 Q. And you are still employed by Lehman Brothers?

13 A. No, I am a consultant. Obviously the concept of
14 Lehman Brothers is a bit more complicated these days.
15 I am still a consultant to a Lehman Brothers entity in
16 the UK and I attend the creditor committees in the UK.

17 Q. Do you still receive payment in that role?

18 A. I do from LBIE, yes. Again, the amounts are not
19 large and it is some time since I last received, but yes
20 I do, absolutely, I am a consultant of LBIE.

21 Q. Are you receiving payment for this deposition?

22 A. No, certainly not. I have no financial interest in
23 this matter at all.

24 Q. If Lehman had not reinvested in 2005, isn't it
25 correct that they would have lost out on future profits?

1 A. Absolutely.

2 MR. JOHNSON: Do you want to take a ten minute break? I may
3 be close.

4 MS. ALVAREZ: Okay.

5 THE VIDEOGRAPHER: We are going off the record. The time is
6 2:49 p.m.

7 (2:49 p.m.)

8 (break taken)

9 (3:06 p.m.)

10 THE VIDEOGRAPHER: We are back on the record. The time is
11 3:06 p.m.

12 MR. JOHNSON: I am finished with my questions.

13 MR. HORWITZ: Okay.

14 BY MR. HORWITZ:

15 Q. Please state your name for the record.

16 A. Peter Sherratt.

17 Q. Could you tell us about your educational
18 background?

19 A. I went to a state school in Warwickshire. Did
20 jurisprudence at Oxford University specializing in
21 company law and international trade and then a masters
22 degree at Cambridge University specializing in corporate
23 and securities law and trade. I studied at the Bar and
24 qualified as a barrister working in the chambers of
25 1 Essex Court.

1 Q. Where are you currently employed?
2 A. I currently work as an executive chairman for
3 a charity called Against Malaria Foundation in which we
4 supply bed nets to people in sub Saharan, largely sub
5 Saharan Africa. I have a number of other assignments.
6 I chair two governing bodies of schools in the inner
7 city; one primary school, one secondary school. I am on
8 the business advisory council of Oxford University
9 Business School and I have various other charitable
10 interests and from time to time I act as a consultant to
11 LBIE in Europe.

12 THE COURT REPORTER: Before we continue, could you go back
13 to how you were sitting before. When you are facing the
14 attorney it is difficult to hear.

15 A. I am so sorry.

16 BY MR. HORWITZ:

17 Q. When did you start working for Lehman Brothers?

18 A. In 1986.

19 Q. And what was your title?

20 A. Legal counsel.

21 Q. What were your responsibilities?

22 A. Well, I joined a very small team. There were only
23 two lawyers and one very highly talented paralegal. And
24 the three of us had responsibility for all legal matters
25 and setting up the legal department in Europe and the

1 middle east and we also set up the compliance
2 department. So I got involved in most of the legal
3 issues that were significant for what was then
4 Shearson Lehman Brothers, because I had worked on a case
5 for Shearson as a young lawyer, and that was the
6 background to me coming over to join Shearson Lehman.
7 So I worked on many things from the start just because
8 there were so few of us.

9 Q. Did your title and responsibilities change over
10 time?

11 A. Yes they did. The most significant change was in
12 1991, when I was asked to become the European legal
13 director, that is the most senior lawyer in Europe, and
14 to manage the legal function and, you know, to interact,
15 obviously, with the chief executive and the other senior
16 managers of the firm. So from that time I was heavily
17 involved, particularly in you know, some of the largest
18 issues of the day, it tended to be if there was
19 a particular crisis the most senior lawyer would be
20 expected to get involved and to try to resolve that
21 crisis to the best of his ability. Obviously working in
22 a team, you know, with other people you have to be
23 a corporate, good corporate citizen. As chief legal
24 counsel that is one of the most essential attributes.

25 In 1994 I became the managing director and took on

1 formal responsibility for compliance and audit and
2 corporate communications and philanthropy. In 1998
3 I believe, I would need to check precise dates, around
4 1998 I was given the same responsibilities in relation
5 to the other non-American jurisdictions, that is Asia.
6 So I would spend time in Asia from 1998 onwards, and in
7 2007 I was appointed as a vice chairman of the firm.

8 But there were various different responsibilities
9 during that time, as I mentioned in cross-examination.
10 The 1998 Russia crisis was a particular focus. It was
11 a large financial exposure for the firm and needed a
12 kind of work out type of experience, and we didn't have
13 a work out group. There weren't significant numbers of
14 loans that defaulted in Lehman Brothers in Europe, so we
15 didn't have an employed work out group. So we tended to
16 do things by involving the legal department, and of
17 course any businesses that had expertise in relation to
18 the issue. But we didn't have a formal work out group
19 to which, for example, assets were sold and then exited
20 from.

21 Q. And you testified earlier that you were on the
22 commitment committee. What was that?

23 A. The commitment committee was involved in approving
24 major transactions in Europe. And for fairly long
25 periods of my career I was on the commitment committee

1 and I chaired it for a number of years. I would need to
2 go back to my records to tell you precisely what years,
3 but I was involved in the commitment committee, heavily,
4 and can remember, you know, the major transactions that
5 went through the commitment committee. But clearly
6 there are dozens and dozens of transaction that do go
7 through. But I hired someone to take over the
8 chairmanship of the commitment committee from me,
9 although he still reported to me. He continued to run
10 the commitment committee under my supervision. There is
11 a natural fit, commitment committee to the other what
12 you might call control functions, and in the US the
13 chairman of the commitment committee, Stephen
14 Berkenfeldt, made the same progression from the legal
15 department to chair of the commitment committee.

16 Q. What would you say is the most senior role you had
17 in Lehman Brothers?

18 A. Well, I suppose the most senior role I had was
19 probably right at the very end in September 2008 when
20 I had to choose the legal firm and the bankruptcy firms
21 to be involved in wind down. But prior to then, I was
22 essentially doing a similar type of job for about
23 17 years; from 1991 through to 2008, as the most senior
24 lawyer. But over that time I did gradually get more
25 senior so I wasn't demoted, I sort of ended on a, you

1 know, on a senior level.

2 Q. What role, what were your responsibilities as chief
3 legal officer?

4 A. Well, they did vary over time. It would be to
5 oversee the legal department, to set it up, to hire it,
6 you know, hire the relevant people. To supervise on any
7 major issues and make judgments, make judgment calls on
8 significant legal issues. It would be in relation to
9 the compliance department, so to make sure the firm
10 stays within the regulatory rules applied to it as far
11 as you can. And internal audit, to make sure that the
12 internal audit was done well. Corporate communications
13 was in relation to dealings with media. That corporate
14 communications function I had for periods and then
15 didn't have for periods and then had for other periods,
16 so things varied over time. And in relation to crisis
17 management it would really depend upon the crisis. So
18 when we did contingency planning, for example, in the
19 event of a major virus outbreak or major, you know,
20 crisis in the city I would be very involved in taking
21 part in those planning exercises, for example. And so
22 when crises developed you know it would be, I would feel
23 responsible for getting involved to try to resolve those
24 crises, obviously along with the chief executive at the
25 time.

1 Q. When you said earlier you were vice chairman of the
2 firm, by the firm do you mean LBHI?

3 A. I mean Lehman Brothers, certainly as I understood
4 it, the most senior, certainly the most senior company
5 within the Lehman Brothers group was LBHI and I was
6 appointed as the vice chairman, but as we have talked
7 about before, the specific legal entities were less
8 important than thinking about the firm as a whole and
9 thinking about how the firm works, so I was vice
10 chairman of what I thought of as Lehman Brothers in the
11 broadest sense.

12 Q. Let us switch gears and talk about Formula 1. What
13 is Formula 1?

14 A. Formula 1 is a company that exists to organize
15 a race calendar to manage the commercial rights, and to
16 generally run the business of Formula 1, which is
17 a racing series which takes place over typically 19 or
18 20 races, it varies a little over the years, in which
19 teams compete for prize money and take part in the
20 profits in general of Formula 1.

21 Q. Did Lehman have any connection with Formula 1 ever?

22 A. Prior to 2001 are you talking about?

23 Q. At any time.

24 A. At any time. In 2001 it lent USD 300 million as
25 part of a USD 1.6 billion total loan to be provided by

1 three financial institutions. And it lent that money to
2 an organization called Kirch which bought 75 percent of
3 Formula 1 and the remaining 25 percent being retained
4 by, as I remember it, Bambino. The loan was made to
5 Kirch with three types of collateral of which, post
6 Kirch bankruptcy, Formula 1 was the most valuable. And
7 so in organizing the bankruptcy of Kirch and attending
8 the creditors meetings, which I did on behalf of Lehman
9 Brothers, what we were trying to do was make sure that
10 the collateral that would come to Lehman Brothers was as
11 valuable as possible. And so I worked extensively in
12 Munich in 2001 in relation to Kirch, but that was very
13 much in relation to Formula 1, because Formula 1 was the
14 largest piece of collateral. And that is where
15 Ruggero Magnoni was enormously helpful and, you know,
16 a very, very valuable colleague and we worked together
17 a lot. Joe Cohen, another investment banker with very
18 strong private equity understanding, as it would
19 essentially become a private equity investment. He had
20 a particular understanding of that field. And there was
21 a whole team of people. Obviously we had legal counsel,
22 we had internal legal counsel, we had investment bankers
23 involved in that from the start, because it was a very
24 large loan default for Lehman Brothers to solve.

25 Q. You mentioned the bankruptcy of Kirch, what is

1 that, and when did that take place?

2 A. I am sorry, Kirch was a media company in Germany
3 and Kirch wanted to buy 75 percent of Formula 1 from the
4 current holders of Formula 1. So it looked to financial
5 institutions to raise that USD 1.6 billion that was
6 necessary. So Bayerische Landesbank, Lehman Brothers
7 and another bank which became JP Morgan, together loaned
8 USD 1.6 billion. And then when Kirch the media company
9 went into bankruptcy itself, the three banks needed to
10 realize the value of their collateral so that they each
11 ended up being shareholders in Formula 1 in place of
12 Kirch.

13 Q. Now, you mentioned Ruggero Magnoni, who was he?

14 A. Ruggero Magnoni was the person who had run the
15 Italian office of Lehman Brothers and was a senior and
16 well respected investment banker working in Italy for
17 Lehman Brothers. He was a long time Lehman Brothers
18 employee.

19 Q. You also mentioned Joe Cohen, who was he?

20 A. Joe Cohen was a particular expert at detailed
21 financial analysis. And when we were working on the
22 Kirch matter, Joe was extremely strong in his detailed
23 analysis of how Kirch should be wound up to our
24 satisfaction and how Formula 1 should fit within that.

25 Q. Now, you've been saying "we". What was your role

1 at this time in connection with Formula 1? This time
2 meaning at the time of the bankruptcy?

3 A. At the time of the bankruptcy of Kirch. Well, this
4 fitted into the work out issue that I was talking about
5 earlier. Just as in previous crises, and it would take
6 too long to go through them all, but from time to time
7 investment banks go through, they have difficult
8 problems to solve and so when in 2001 Kirch went into
9 bankruptcy, it was naturally a concern for the people
10 who had lent the money, which was the fixed income
11 department of the firm, and they and I talked
12 extensively about it. The chief executive was very
13 interested in, you know, how it would be resolved,
14 because there was a significant financial delta between
15 it resolving successfully and unsuccessfully. And it
16 went right to the top of the firm in terms of the
17 monitoring of it.

18 With such a large amount at stake, it was very
19 common at Lehman Brothers to have someone in corporate
20 involved to protect the corporation as a whole and
21 because we didn't have a work out team, that was
22 a fairly natural role for Lehman counsel to play. So it
23 was very much done in collaboration with people in fixed
24 income, because they were the people holding the -- you
25 know, they were the ones with the biggest amount of

1 risk, so Stephen Sleigh, who appears on various emails,
2 you know, he was in the leverage finance part of fixed
3 income, which was the area that held the investment and,
4 you know, it was important for me to work, you know,
5 with them. But in terms of the person who went over to
6 Munich to sit around the table with the other creditors,
7 that fell to me and Ruggero also spent time in Munich
8 and Joe Cohen spent a lot of time in Munich. So
9 I suppose, you know, the fixed income department, still,
10 it stayed very much involved but slightly more from
11 a stance at that point.

12 Q. What was your involvement in connection with F1
13 prior to the bankruptcy?

14 A. Well, I had seen it at commitment committee,
15 because there had been a lot of discussion around
16 whether Formula 1 would be an appropriate asset to hold
17 as collateral on a loan. And there was significant
18 feeling within the firm, particularly in Europe, that
19 Formula 1 was in fact an excellent asset. But it is
20 an unusual asset. Clearly it is highly cash generative,
21 but it is dependent upon a single, you know, it has one
22 important chief executive and the public flotation of
23 Formula 1 is not simple. So there is no easy, instant
24 route to exit.

25 Q. You mentioned a team and then a number of

1 individuals. Can you tell us what this team was?

2 A. Well, in 2001, when we went through, going through
3 the bankruptcy of Kirch, and it was recognized that
4 Formula 1 really was the major asset, a team was formed
5 of three people to do sort of what you might call the
6 work out from the team. That was not to exclude other
7 people, other people had enormous amounts of expertise,
8 on Formula 1 and they would absolutely be involved as
9 much as possible. But there was a need for some people
10 who would be involved on a day to day basis who would
11 actually, you know, spend time with the chief executive
12 of Formula 1 and interact with the other shareholders of
13 Formula 1 and that team that was put together was
14 a three man team, Tom Bernard, Steve Hannan and myself.
15 So the three of us would regularly discuss how Formula 1
16 could be managed. All of the various issues within
17 Formula 1, which were many, because Formula 1 had
18 a significant corporate governance problem, and that was
19 very much a feature of the relationship between the
20 three banks. On the one hand they had issues in their
21 relationship and there were also issues between some of
22 those banks and the chief executive. They have been
23 well documented, but that was also as I saw it.

24 Q. Who was Tom Bernard?

25 A. Tom Bernard was a very respected person from within

1 background.

2 Q. You mentioned investment bankers. Who are the
3 investment bankers at this time?

4 A. It is quite a large team that got involved from the
5 time when Formula 1 was turned into an asset by Lehman
6 Brothers. The people I remember most are
7 Patrick Schmitz-Morkramer, who tended to lead what you
8 might call the day to day work, investment, advisory
9 business side of it, you know, on the F1 matters.
10 Patrick Bierbaum was I think in investment banking but
11 he was in a sense seconded over to work for Tom, Steve
12 and I. But Patrick Schmitz-Morkramer was the senior
13 banker involved. Clearly Vittorio and Ruggero. Ruggero
14 had been involved from a very early time on the Formula
15 1 matter. Vittorio is somebody who may well have been
16 involved early on, but he certainly became involved
17 after we were out in Munich and we decided it would be
18 very valuable to have Vittorio's insightful analysis.
19 And then there was a team, there is a whole team of
20 people behind Patrick Schmitz-Morkramer who would do the
21 financial analysis. That team changed over time and you
22 would have some junior people coming and going, but
23 Patrick was pretty constant throughout. They would do
24 the analysis on, for example, how much could be obtained
25 on exit by refinancing, particularly.

1 a strong financial interest in it, particularly fixed
2 income, were aware of what was happening, because they
3 were the people who would take most of the profit or the
4 loss. So there was a lot of interest in fixed income.
5 I mentioned Bart McDade, but obviously the senior folks
6 in fixed income were very interested in what was
7 happening in Formula 1 so we needed to keep them
8 involved.

9 Investment banking. Clearly they had a lot of
10 expertise and could give us a lot of advice on that, and
11 that would be incredibly valuable to the firm to have
12 them advise on what the possibilities were for
13 Formula 1.

14 Q. Was fixed income a separate group like the
15 investment banking team?

16 A. Fixed income, yes, they didn't have such a formal
17 group because they didn't have an engagement. They held
18 the investment, so they had it within their P&L. It was
19 on their books, so the fixed income department had made
20 the original loan, you know, from their leverage finance
21 group so they were key. But investment bankers,
22 certainly, they are obviously very knowledgeable, and we
23 operated as a, in a collegiate fashion, across the
24 piste, including with Thomas when he had provided, you
25 know, his input.

1 It is a term commonly used within the industry to
2 describe the internal records of the investment bank to
3 show whether it was profitable, doing well, or not doing
4 well in any particular area.

5 Q. What were -- were there any significant
6 transactions involving Formula 1 investments after the
7 bankruptcy in 2002?

8 A. Yes there were. After we had taken it on as a sort
9 of direct shareholding, there were clearly many issues
10 that arose during the next few years. As I said, there
11 are many disputes, many issues, but in terms of
12 transactions for the term in relation to Formula 1
13 investments themselves, in 2005 we were approached by
14 CVC, who had already approached Bayerische Landesbank
15 and they may well have approached JP Morgan. They
16 approached us to see if we would sell to them and we
17 were very mindful of who CVC was and their interests.
18 Obviously it was very nice to see their interest.
19 I personally were very excited, because I had a high
20 regard for CVC.

21 Q. Who were CVC?

22 A. CVC was a private equity firm formed by senior
23 individuals from Citigroup including Don Mackenzie and
24 other senior individuals at Citigroup, and they formed
25 a private equity group which became very successful and

1 they named it CVC.

2 Q. What was CVC's interests from then on?

3 A. CVC I think could see the opportunity, it could see
4 that Formula 1 was a profitable firm, which is a company
5 which generates significant amounts of cash. It has
6 contracted revenues from TV companies and from sponsors
7 who hold races and it also has money from advertisers
8 and hospitality and freight. So it is an attractive
9 development for a private equity firm. It is also
10 an attractive investment to refinance, which I can go
11 into more detail if you wish. But in any private equity
12 transaction it is normal for a private equity firm to
13 look at refinancing as an opportunity to realize their
14 money. And Formula 1, given its structure, is a good
15 company to go through a refinancing transaction.

16 Q. What happened after CVC approached you in 2005?

17 A. Clearly we were excited. We could see there had
18 been many problems at Formula 1. We could see the value
19 of the asset but clearly there were many issues, so it
20 was very good see that a company that we respected was
21 coming in to buy it and certainly I was particularly
22 excited by the fact, and perhaps I would be, but I was
23 particularly excited by the fact that I thought that
24 this would bring harmony and good governance to
25 Formula 1, because CVC would know how to structure

1 Formula 1 in such a way as to make it attractive to the
2 refinancing markets and those refinancing markets needed
3 proper governance, proper structure, because if a bank
4 is lending large amounts of money to a company and then
5 issuing bonds, you need to have proper structures to
6 make sure that the bondholders are paid. So CVC
7 approaching us was very attractive. It also indicated
8 that they had confidence in the long term future of
9 Formula 1, which was very nice to see.

10 Q. What happened after they approached you in 2005?

11 A. Well, we had various discussions about whether we
12 should stay in, or whether we should exit. And I am
13 struggling to think of anyone who advocated exit, but
14 naturally you should, in all conscience, make sure that
15 we looked at it carefully because if we got it wrong
16 then the firm could lose significant amounts of money.
17 So what we were all clear on is that we did not have
18 a short term time horizon on this, we had a long term
19 horizon. So we were looking to maximize receipts over
20 the long term. And so we looked, too, at the fact that
21 if we exited and sold and then reinvested alongside CVC,
22 we would be able to align our interests more with CVC.
23 We wanted to have the opportunity to reinvest at the
24 holding company level. What this would do was realize
25 the possibility of a number of ways of increasing

1 Formula 1's revenues and we had a number of acquisitions
2 that Formula 1 could make that we thought would be
3 strategically very attractive. One had been discussed
4 a lot before, but had never been consummated and that
5 was to buy the hospitality business, and we felt it had
6 never been possible to agree on something like that
7 whilst the banks were owning Formula 1. So it was good
8 to see that CVC had that possibility.

9 CVC, if they were the major shareholder were in many
10 ways running the firm, obviously along with the chief
11 executive, but they would be much more able to be nimble
12 and realize those possible opportunities. So that
13 another very significant reason. So we discussed that
14 and that was, you know, those discussions took place.
15 They were on a fairly tight timescale, I think, and
16 I don't recall the precise, you know, contents of those
17 discussions. All I really recall is how I felt and
18 whether there was any real doubt about staying in.
19 I think certainly I didn't have any doubts and I don't
20 know any senior person who had any doubt, or any junior
21 person for that matter. I don't recall doubts about
22 staying in. I can't vouch, of course, for everybody's
23 point of view on that. There may well have been other
24 doubters within the firm and that may well have been
25 true.

1 Q. Was the decision made, then, about whether to stay
2 in or get out?

3 A. Yes, there was. And I think we all felt that this
4 was the right -- you know, CVC were buying, we didn't
5 want to sell, and it was our job then to make sure that
6 this was agreed by the most senior manager of the firm.
7 I would need to speak to Jeremy Isaacs, and Tom Bernard
8 would need to speak to his folks in New York and we
9 would need to make sure that they were agreed, and on my
10 side that was cleared very quickly, and quite rightly.
11 And I don't know the details of the discussions in New
12 York.

13 Q. Were there any significant transactions after this
14 transaction occurred in 2005?

15 A. Yes. Well, clearly CVC was, had been thinking
16 the same way that we had been thinking and the analysis
17 we had done on refinancing they had done as well, of
18 course, and they brought the company to the bond markets
19 in late 2006 with a bond holding, with a bond offering
20 of just short of USD 2 billion, I think it was around
21 1.9, USD 1.95 billion, something like that. And so the
22 bulk of that would be paid as the dividend to the
23 shareholders. So that was, you know, clearly
24 an agreement that we liked and by that time I was
25 obviously on the board of Formula 1 and we -- you know,

1 investment banking group of the firm, worked on it. But
2 the bond offering itself, you know, it was not, the
3 bonds had been widely traded, so there was no secret to
4 it.

5 Q. So in 2006 who made the decision, would have made
6 the decision? Who made the decision to go forward with
7 this refinancing?

8 A. Well, that was a decision, of course, for
9 Formula 1. But the shareholders of Formula 1 had to be
10 comfortable with it and indeed CVC, one would expect,
11 proposed it, and they obviously would have told me at
12 that time. So although it was a decision for the
13 company, the shareholders would need to be on board and
14 clearly the investment banks retained, in this case
15 Lehman Brothers and RBS, needed to have done the work to
16 prepare the company and make sure that it was ready for
17 the bond offering. And they did extensive work to make
18 that happen.

19 Q. What was your role at this time? Now we are
20 talking about in 2005 with respect to Formula 1?

21 A. In 2005 I was part of a group of three, along with
22 Tom Bernard and Steve Hannan, to manage the work out,
23 you know, to manage the Formula 1 investment. But would
24 work along side, you know, listen to and take into
25 account views expressed from anybody who offered them,

1 all around the firm. As you can imagine, Formula 1 is
2 an incredibly public matter. It was probably the
3 hottest, you know, most interesting investment done by
4 the firm in Europe. So many people asked questions,
5 offered their opinions, but of course the opinions that
6 really mattered were the ones from, you know, who had
7 a strong insight into Formula 1.

8 Q. And what was your role in 2006 when the refinancing
9 occurred.

10 A. Well, by that time I think Tom had either left the
11 firm or was no longer involved in Formula 1. He stopped
12 being involved after the CVC transaction. So after the
13 2005 transaction it was my responsibility to manage that
14 as, I was on the board of that. But again I would
15 obviously speak to, I don't want to pretend I had
16 a monopoly of knowledge, I would speak regularly with
17 the chief executive about it and I would listen very
18 carefully to others and naturally make sure that the
19 right people were informed, you know, taking into
20 account Chinese walls, which restrict the flow of
21 information. It was my, it was my responsibility to try
22 and make sure our shareholding in Formula 1 retained its
23 value.

24 Q. What was Ruggero Magnoni's role in 2005?

25 A. He was senior investment banker. He stayed in and

1 around the Formula 1 investment. He was always useful
2 to listen to, because he had some tremendous insights
3 because he knew Formula 1 from a long time before. You
4 know, he had been involved, you know, back as long ago
5 as anybody, you know, back end of 2001, and possibly
6 before then. Ruggero was somebody I respected
7 enormously. We would talk about Formula 1. I don't
8 think I would naturally have talked to him about what
9 was going on on the board of Formula 1, I think that
10 might have not been a normal process. I may have done
11 from time to time, but I would have wanted to respect
12 the confidentiality of Formula 1, obviously, within the
13 confines of having been nominated to sit on a board by
14 Lehman Brothers and obviously I was recognized as
15 directly representing the shareholders of Lehman
16 Brothers. But that didn't mean I could speak to any
17 single person at Lehman Brothers. But I would want to
18 speak to the appropriate senior people within Lehman
19 Brothers.

20 Q. What was Ruggero Magnoni's role in 2006 when the
21 refinancing occurred?

22 A. Well, again, he was the sort of senior person in
23 the background. He -- I was obviously on the board but
24 the investment banking team at that time was led by
25 a chap, a person called Richard Atterbury, and the

1 reason for that was that he had had a relationship with
2 CVC prior to them becoming involved in Formula 1. And
3 so he was the natural relationship partner who would
4 deal with CVC if it came to refinancing. So Richard
5 Atterbury at investment banking was an important person
6 and I would speak often to him. Patrick
7 Schmitz-Morkramer was also actively involved in
8 investment banking, he played a significant role, and
9 Vittorio Pignatti, I am sure, kept an eye on what was
10 happening. I don't recall many conversations with
11 Vittorio, but he knew the Formula 1 asset very well.

12 Q. What was Vittorio's role in 2005?

13 A. Like Ruggero. Ruggero and Vittorio often worked
14 closely together. They would often be in the same
15 situation that they would offer their views and their
16 advice and I would listen to them carefully, as would
17 Tom and Jeremy Isaacs and I am sure that they would
18 listen to Ruggero and Vittorio and I would think that
19 they, you know, they clearly added value. They had some
20 excellent insights into how to realize the value of the
21 Formula 1 investment.

22 Q. And what was Vittorio's role in 2006?

23 A. It would be similar. Perhaps a little less,
24 because once of course CVC took over, CVC was really in
25 the driving seat, pardon the pun, of Formula 1. And

1 he -- the issue for Lehman Brothers was much less, was
2 much less live and dynamic after 2006, because
3 essentially proper corporate governance was put in place
4 by CVC. So it was a matter of, I wouldn't say merely
5 attending the board meetings, it was more than that, it
6 was discussions outside of it, but there weren't key
7 decisions to be made, there wasn't the same conflict
8 between the shareholders, there wasn't the need to have
9 regular meetings with Bernie Ecclestone, for example, as
10 there was prior to that. So although I would obviously
11 see Mr. Ecclestone at the board meetings, I wouldn't
12 normally have, you know, many meetings outside of those
13 with him. But I would keep in regular contact with CVC.
14 Whereas prior to 2006 naturally all of the banks needed
15 to integrate with the chief executive as it was proper
16 for them to do.

17 Q. Did Lehman Brothers ever retain any outside
18 advisers in connection with the Formula 1?

19 A. Not that I know of, not Lehman Brothers. Apart
20 from, I suppose, if you call -- during the period after
21 the bankruptcy of Kirch, the three banks together, and
22 then it may well have then just become JP Morgan and
23 Lehman Brothers, but they retained Lehman Brothers as
24 an adviser. So it was recognized that there should be
25 appropriate payment for the investment banking team

1 working on it and they pitched and were awarded the
2 mandate. And that was the team headed up by
3 Patrick Schmitz-Morkramer. So they were given retainer,
4 fees, in relation to Formula 1. So Lehman Brothers and
5 the other banks, particularly JP Morgan, had retained
6 Lehman Brothers, but post 2005 the only retentions that
7 were then done of Lehman Brothers were done by Formula 1
8 itself in doing the refinancing and the other matters.

9 Q. Now I want to talk about the movement in this
10 proceeding, Thomas Marsoner. What was Thomas Marsoner's
11 role, if anything, in connection with Lehman's
12 investment with Formula 1?

13 A. Well, Thomas provided us with insights on
14 Formula 1. And he at one time was discussed within
15 Lehman Brothers, and I was part of those discussions,
16 and we were interested in the banks potentially having
17 a sort of a point person who might be able to work on
18 this pretty well full time. So we had various
19 discussions with JP Morgan around this as a possibility
20 and, you know, we thought Thomas might be a good person
21 to do that. And Thomas is somebody that I have worked
22 with since the time when he joined Lehman and he had
23 come over as a senior banker from Salomon Brothers, and
24 so I had no problem with that. I liked Thomas and
25 I thought that he had interesting insights. And he was

1 somebody that we proposed to JP Morgan to be hired as
2 an adviser. But that didn't in fact take place.

3 Q. When did these discussions take place?

4 A. I think it was quite early on. It was back in, it
5 would have been after the main bankruptcy work around
6 Kirch but well before the CVC, you know, purchase of
7 some parts of Formula 1. It would have been, I think,
8 in 2002.

9 Q. This role that was discussed, what did it have to
10 do with exiting the Formula 1 investment?

11 A. Well, I must admit I think we were thinking at that
12 time of sort of managing our -- obviously every firm
13 wants to realize the gain on its investment, that is
14 obviously the end game. But what we were interested in
15 at that point was that we thought that this would be
16 a long haul, because there was no immediate buyer on the
17 horizon. There was no certainly no prospect of
18 an immediate sale to the public market. So the
19 likelihood was, and that was our analysis, that
20 refinancing was likely to be our means of recovering our
21 money. And so you have to be in it then for the long
22 haul.

23 So our focus, really, was on just managing the day
24 to day interactions with Princess Gate, which is where
25 the chief executive had his office, and perhaps

1 smoothing over the relationships between the banks,
2 because that was one of the issues that had arisen,
3 there was a different philosophy between the banks,
4 particularly on the one hand you have two American
5 financial institutions, on the other hand you have
6 a partly state owned organization in Germany and the
7 philosophies that they approached this with were
8 different. It is not to say that one was better than
9 the other, but we had many differences of opinion.

10 Q. Who was the state owned bank?

11 A. Bayerische Landesbank. They were the largest
12 shareholder.

13 Q. Who decided to not retain Thomas Marsoner in 2002?

14 A. Well, JP Morgan weren't interested, they didn't
15 want the extra layer of communications, and I don't
16 think they wanted the expense of it, either. They
17 decided that they didn't want to do that.

18 Q. Was there a discussion within Lehman of retaining
19 Thomas Marsoner any way?

20 A. Not that I know of.

21 Q. Why was there a decision made not to retain Thomas
22 Marsoner in 2002?

23 A. Well, I think it is largely a matter for JP Morgan,
24 but I think from memory that they had a problem with
25 another -- they wanted direct access to the chief

1 executive, which obviously is valuable. And they
2 recognized that they were perhaps a little short of
3 resources on that. Because it is a heavily resourced
4 issue. We are all very busy. Tom Bernard is over in
5 the States. I have my, sort of, job to do. From
6 Lehman's stand point it would perhaps have been nice to
7 have someone, but there we are. And from a JP Morgan
8 perspective they decided to, I think, put more resources
9 on it internally.

10 Q. Was there ever an advisory agreement signed between
11 Lehman and Marsoner in connection with Formula 1?

12 A. Not to my knowledge.

13 Q. Have you ever seen any of Thomas Marsoner's
14 advisory agreements?

15 A. Not -- well, not until this litigation. I mean
16 I have now seen a -- I am not quite sure when, I am not
17 sure which exact advisory agreement it was, but I have
18 now seen an advisory agreement. But at the time I don't
19 think I was involved. As I said, on the
20 cross-examination I can't be absolutely sure, because
21 I did have responsibility for the legal department which
22 was involved in all consultancy agreements, so it is
23 absolutely possible that I may have seen it, but I don't
24 recall seeing any agreement with Thomas. But, you know,
25 consultancy agreements, they did come across my desk

1 from time to time.

2 Q. You said "this litigation", you mean this
3 proceeding?

4 A. Yes, I mean this proceeding, yes.

5 Q. Have you been involved in any other legal
6 proceedings relating to Thomas Marsoner's involvement in
7 F1?

8 A. Well, he did bring a similar claim in the UK for
9 this same, on this same subject.

10 Q. Did you ever see any copies of his advisory
11 agreements in connection with that proceeding?

12 A. I did, yes.

13 Q. Did --

14 A. I mean I saw, I have seen a draft of, in those
15 proceedings. I guess, is there a confidentiality issue
16 here for the other, for the legal proceedings?
17 I believe they have been settled. But do you --

18 Q. I don't know.

19 A. I obviously need to be aware of my confidentiality
20 obligations in relation to those proceedings.

21 Q. Do you know if Thomas Marsoner was engaged within,
22 for any other Lehman clients?

23 A. Yes, absolutely. I think he was. I can't remember
24 which ones now, but I think he was involved in, as of
25 when he left the firm, I think he was hired as

1 a consultant. So I knew that Thomas had other clients,
2 absolutely.

3 Q. Were there advisory agreements entered into in
4 connection with those clients?

5 A. Well, again, I don't think I saw the consultancy
6 agreements that he entered into. So that wouldn't be
7 normal for me to sit and look at individual consultancy
8 agreements, because my job was to manage all of the
9 legal, regulatory matters across Europe and Asia. So
10 that takes in quite a lot of issues, and it wouldn't
11 have been right for me to personally manage those
12 consultancy agreements, they should be done by
13 investment banking and legal specialists.

14 Q. So were you involved in negotiating any of his
15 advisory agreements?

16 A. I don't think so, no. I don't remember that. I
17 knew Thomas and I liked him, and I wished him well and
18 I was glad he was a consultant. I felt we always got on
19 well but I don't remember being involved in negotiating
20 his consultancy agreement.

21 Q. When you did retain advisers, would you have
22 entered into an advisory agreement with them?

23 A. Consultancy, yes. I mean when you hire
24 a consultant, just as if I retained now, I would enter
25 a consultancy, you would have a consultancy agreement.

1 In fact the first consultancy agreement for what was
2 then Shearson Lehman Brothers, was one that I drafted,
3 I did the basic draft, I think, upon which the
4 subsequent ones were based. So yes, the consultancy
5 agreements, it is important because it affects, you
6 know, huge amounts of things, whether it is
7 confidentiality, whether it is pay, whether it is, you
8 know, intellectual property rights, there is a whole
9 raft of things which make it very important to have
10 a consultancy agreement in place.

11 Q. Who would have been responsible for negotiating
12 those agreements?

13 A. That was done by the relevant business, whichever
14 it was, because clearly you have consultancy agreements
15 in all sorts of different businesses. You have
16 technology consultants, you have, on the one hand and
17 you can have investment banking consultants on the other
18 hand. You have lots of consultants in between. So HR
19 would need, would be the sort of area that would
20 normally keep the consultancy agreement. And it would
21 be, they would be originally negotiated by the relevant
22 business who was hiring the consultant. And then that
23 business would then have a procedure in place to make
24 sure that it would involve the legal department and, as
25 I said, the HR department to make sure that it was in

1 accordance with the firm's standard requirements on
2 consultancy agreements. Because clearly there are
3 minimum standards that you have to have on any well run
4 firm to make sure you don't have people signing all
5 kinds of different agreements, you know, that is the
6 sort of ABC of hiring. It is a bit like employment
7 agreements, you have to have the standard form and you
8 have to make sure that people can follow them.

9 Q. Why is it so important with advisory agreements?

10 A. Well, you don't want people thinking that they
11 should be paid when they, when it has not been agreed.
12 That is one reason. But another reason is that you want
13 to make sure that people have confidentiality and you
14 want to make sure that intellectual property, if it is,
15 particularly with technology consultants, is retained by
16 the firm rather than given to the consultant.

17 Q. Based on your work on the commitment committee, the
18 management committee, can you tell us how Lehman
19 accounted for its investment in Formula 1 in its books
20 and records?

21 A. I am afraid that is a big question, because
22 obviously it changed over time. What would happen is
23 that in each year end we would, because we were filing
24 our annual accounts, and they would be audited annual
25 accounts, we needed to make sure absolutely sure that

1 Brothers in connection with Lehman Brothers?

2 A. I don't know that myself. I don't know, I don't
3 have personal knowledge of that.

4 Q. I want to show you one of the exhibits that we
5 looked at that was marked exhibit 5 by Dr. Marsoner's
6 counsel. It is the email.

7 A. It is that one, okay.

8 Q. This is the email where you see it says at the top
9 from Bernard Thomas E, sent Saturday, November 2005?

10 A. Yes.

11 Q. To Steve Hannan, Patrick Schmitz-Morkramer, Peter
12 Sherratt and the subject is "F1 group sold to CVC
13 Capital Partners for undisclosed sum". The first line
14 of the email says:

15 "FYI. If McLaren is true it is huge. I am almost
16 certain we are staying in."

17 What is McLaren?

18 A. McLaren is a team. It is one of approximately ten
19 teams in Formula 1 who were participating in the 2005
20 season, which I think was won by Renault, if I remember.
21 But yes it was a team in Formula 1.

22 Q. The email right below it, second paragraph, says,
23 in the second sentence:

24 "Keep your stake and don't be spooked if JPM does
25 a BayLaBa."

1 What is BayLaBa?

2 A. BayLaBa is Bayersriche Landesbank.

3 Q. Do you know what doing a BayLaBa is?

4 A. Well, I don't know quite what he meant, but

5 Bayerische Landesbank sold to CVC, sold their stake to

6 CVC, and did not reinvest as far as I know. Perhaps

7 they may have reinvested a small amount, but as far as

8 I know they didn't reinvest.

9 Q. The third paragraph says:

10 "If, conversely, you want to get LB out of the F1

11 headlines (or feel your relationship with Bernie has

12 become too bad) a Marsoner family company previously

13 involved in consumer products would happily consider

14 taking it on if it comes with a to-be-agreed financing

15 package fairly sharing risks and rewards."

16 Do you know what this means?

17 A. Well, I think this means that Thomas was prepared

18 to organize a purchase of the Lehman Brothers stake by

19 a Marsoner Family company, and he would like a financing

20 package, in other words he would like help with raising

21 the money to be able to do that and he wanted a fair

22 share of risks and rewards as a result.

23 Q. The email right below it is an email

24 dated November 25, 2005, from Thomas Marsoner to

25 Vittorio Pignatti.

1 A. Mm-hm.

2 Q. The second to last paragraph says:

3 "Needless to say, if a "fresh face" were helpful to
4 facilitate things here, mine continues to be available
5 for a very modest percentage participation in LB's gain
6 upon eventual sale."

7 Did I read that correctly?

8 A. Yes.

9 Q. Was this fresh face offer ever accepted by Lehman
10 Brothers?

11 A. No, no. For the same reason as before. It was
12 very nice to have Thomas' input, of course. It is
13 always useful to hear opinions from everywhere. And his
14 insights, you know, particularly the Austrian scene,
15 were well respected. But we didn't want to hire him and
16 I don't think we would have. No, we didn't want to do
17 that.

18 Q. The first line of the email says:

19 "If this is the deal I suspect it is, my senior
20 advice is (strongly) against selling now."

21 A. Yes.

22 Q. "Selling out now."

23 Did I read that correctly?

24 A. Yes you did. He was right, we shouldn't sell it.

25 And we didn't think we should.

1 reveal where we were on it, because clearly that could
2 influence other people that we were negotiating with.
3 So yes, he would want to be quite guarded about it.
4 I think it means what it says.

5 Q. Did this email influence your decision not to sell
6 your stake in Formula 1?

7 A. My personal?

8 Q. Or Lehman, the work out team's?

9 A. The one going from Thomas -- Tom Bernard to Thomas?

10 Q. The one from Thomas to Tom Bernard.

11 A. Which?

12 Q. Tom Bernard says "we're inclined to take your
13 advice".

14 A. Yes.

15 Q. Did that advice influence your decision?

16 A. I think the position with Thomas' input was that it
17 was helpful. It is very, very useful when you are
18 looking, as Tom said, you are in the discovery mode when
19 you're looking at it, absolutely, it is very, very
20 useful to take into account all of your different
21 sources and you would need to ask Tom what his balance
22 of opinion was. But all I can say is that from our
23 perspective and from the people that I spoke to, I was
24 never in any doubt that we should stay in and I know it
25 sounds easy to say that now, but that is what happened,

1 because I thought CVC would bring the corporate
2 governance that Formula 1 so badly needed.

3 Q. Okay, I am going to show you just one other
4 document that has not been marked as an exhibit yet. We
5 will mark this exhibit 9.

6 (Exhibit 9 marked for identification)

7 MR. HORWITZ: Do you need another copy?

8 MR. JOHNSON: No.

9 A. This is then exhibit, is it? I keep that one and
10 I give it you back at the end.

11 THE COURT REPORTER: Yes.

12 BY MR HORWITZ:

13 Q. If you turn to the second page of this document, do
14 you see on the bottom right-hand corner of the document,
15 it says "Marsoner 00000197"?

16 A. Yes I do.

17 Q. Can you turn to the second page. There is an email
18 in the middle of the page from you and it is
19 dated October 3, 2014 and it says, starts on the second
20 paragraph:

21 "My view is that the claim on LBEL isn't justified.
22 We both know there was no agreement to pay you relating
23 to F1. You are a highly intelligent and meticulous
24 person, and would have put in a claim years ago if you
25 believed in it."

1 Did I read that correctly?

2 A. Yes.

3 Q. In the second paragraph starts:

4 "I do feel a lot of loyalty to old colleagues,
5 especially those I've know for a very long time... But
6 helping on the claim would not only be wrong --"

7 A. "Like you".

8 Q. I am sorry.

9 "...Like you. But helping on the claim would not
10 only be wrong but involve giving false evidence, which
11 is of course a criminal offence in England. Just fyi,
12 Linklaters have spoken to Tom and Christian, who share
13 the view the claim is unjustified."

14 Have I read that correctly?

15 A. Yes.

16 Q. Do you recall sending this email?

17 A. I do. It is relatively recent; as in 2014.

18 Q. Who is Tom that you reference in the email?

19 A. Bernard.

20 Q. Tom Bernard?

21 A. Tom Bernard.

22 Q. Who is Christian?

23 A. Christian Meissner.

24 Q. Who is Christian Meissner?

25 A. He became the head of investment banking. So he

1 was the person to whom the investment bankers sort of
2 reported to in Europe.

3 MR. HORWITZ: We are done. You can go off the record.

4 THE VIDEOGRAPHER: We are going off the record. The time is
5 4:31 p.m.

6 (4:31 p.m.)

7 (Break taken.)

8 (4.46 p.m.)

9 THE VIDEOGRAPHER: We are back on the record. The time is
10 4: 46 p.m.

11 BY MR. JOHNSON:

12 Q. Did Lehman Brothers work closely with JP Morgan in
13 its investment in F1?

14 A. Yes.

15 Q. Did JP Morgan sell its stake in F1 in 2005 after
16 CVC came in?

17 A. Sold most of it, yes.

18 Q. Did JP Morgan have Dr. Marsoner's advice?

19 MR. HORWITZ: Objection to form.

20 A. I don't know, but I would guess not.

21 Q. Because he worked for Lehman Brothers?

22 MR. HORWITZ: Objection to form.

23 A. He had worked for Lehman Brothers for a long time
24 and was obviously a friend, and trusted person by Lehman
25 Brothers. I don't know if he knew the people at

1 JP Morgan. He may have done, but I don't know that.

2 Q. I believe that you stated that USD 1.9 billion came
3 into Lehman Brothers -- strike that. USD 1.9 billion in
4 2006, is that a correct number?

5 A. Yes. The reason I can't be sure is that the amount
6 -- it is a matter of public record so you can check
7 this, but it was around about, I think USD 1.95 billion
8 was the total amount of the refinancing in 2006.

9 Q. What percent of F1 did Lehman hold at the time?

10 A. Approximately 15 percent.

11 Q. 15 percent of USD 1.9 billion?

12 A. Approximately, yes. As I said, the shareholding
13 changed slightly over time because of the management
14 shares issued and I would have to go back and check
15 precisely what the numbers were. But it was in the
16 region of 15, maybe 16, percent of Formula 1.

17 Q. So that is a little over 300 million?

18 A. That's right, yes.

19 Q. How much did Lehman originally invest?

20 A. 300 million in the original loan, but the
21 reinvestment was a little bit more complicated. So if
22 you are talking about the 2005 transaction that is a
23 slightly more complicated an issue. But the amount that
24 Lehman had put into the loan was 300 million.

25 MR. JOHNSON: Okay. That is it. Those are all of my

1 IN THE UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3

4 - - - - -
5 IN THE MATTER OF

6 IN RE: LEHMAN BROTHERS HOLDINGS INC., ET AL.,
7 Debtors.
8

9 - - - - -
10 DEPOSITION OF VITTORIO PIGNATTI

11 VOLUME I

12 Monday, November 16th, 2015

13 AT: 3:30 p.m.

14 Taken at:

15 Hogan Lovells

16 50 Holborn Viaduct

17 London

18 EC1A 2FG

19 London

20 United Kingdom
21

22 CONFIDENTIAL

23 Court Reporter:

24 Chris Lang

25 Accredited Real-time Reporter
26
27
28
29
30
31

1 the witness and we can proceed.

2 VITTORIO PIGNATTI

3 having been Sworn testified as follows:

4 BY MR JOHNSON:

5 Q. And Mr. Pignatti, I wanted to start with your work
6 experience. So when did you begin working at Lehman
7 Brothers?

8 A. March 1989.

9 Q. March 1989?

10 A. 1989 and I finished working for the liquidator of
11 Lehman Brothers in, I think it was April 2009.

12 Q. And what jobs did you have whilst you were at
13 Lehman Brothers?

14 A. I started as head of investment banking for Italy
15 then I was promoted in 1998, relocated to London and
16 became the head of mergers and acquisitions advisory for
17 Europe and then at the end of 2006, or some time in
18 2006, I became Vice Chairman, maybe the year before, but
19 I was assigned to be responsible for private equity for
20 non-US.

21 Q. Okay. And what were your responsibilities in those
22 positions?

23 A. In the last position I was responsible for
24 non-listed balance sheet investments and Lehman Brothers
25 private equity funds, which included the buy out funds,

1 the real estate funds, the credit funds, the funds of
2 funds, and so on.

3 Q. Now, could I ask that Mr. Pignatti be given the
4 2007 annual report, please. If you look at this, it is
5 the 2007 Lehman Brothers annual report and if you see in
6 the bottom right-hand corner it says Marsoner and then
7 has numbers after it?

8 A. Mm-hm.

9 Q. If you turn to page 606, please.

10 MS. ALVAREZ: I just want to clarify, are we using the same
11 exhibit that was marked in Peter Sherratt's deposition?

12 MR. JOHNSON: Yes.

13 DENISE ALVAREZ: Okay.

14 A. Six.

15 MS. ALVAREZ: Are you marking it as exhibit 1 as it is a new
16 deposition?

17 MR. JOHNSON: Using the same exhibit marks.

18 MS. ALVAREZ: Okay, what was this in Peter Sherratt's
19 deposition?

20 THE COURT REPORTER: Exhibit 1.

21 MS. ALVAREZ: Okay.

22 BY MR JOHNSON:

23 Q. Do you see your name listed --

24 A. Mm-hm.

25 Q. -- in the column "other officers"?

1 A. Yes.

2 Q. And is that because you were an officer of Lehman

3 Brothers Holdings Inc.?

4 A. Yes. Here it says Lehman Brothers Inc. I don't

5 see the "Holdings". I say Lehman because it was a very

6 complex global organization. The various bookings or

7 transactions, contracts and so on, was not under my

8 domain, but it was really done by technical people on

9 the legal and tax side.

10 Q. Sure. And could you actually turn back on that

11 same page.

12 A. Mm-hm.

13 Q. And identify other people that you worked with at

14 Lehman Brothers?

15 A. If you give me the page again.

16 Q. 606.

17 A. Dick Fuld, Jasjit Bhattal, Erin M Callan. I can

18 tell you who I didn't work with, which is probably

19 easier. Given that I spent, by 2007, 18 years in the

20 group there weren't that many people that I didn't work

21 with.

22 Q. Okay.

23 A. I didn't deal much with Burton, Gatto, Robatyn,

24 Safreno, Taussig.

25 Q. Everyone else listed you worked with?

1 A. Between senior management and other officers, the
2 board members, I didn't have much relationship with
3 other than two.

4 Q. Okay. And to your understanding was it common for
5 members of Lehman Brothers' leadership to serve multiple
6 roles?

7 A. Absolutely.

8 Q. Now, how do you know Dr. Thomas Marsoner?

9 A. I know him because when he joined Lehman Brothers
10 I was one of the managing directors of the firm, so
11 I participated in the hiring of that team, because he
12 didn't come on his own, he came with a group from
13 Soloman Brothers.

14 Q. And did he work as an adviser to Lehman Brothers at
15 a certain point?

16 A. Yes, after many years as an investment banker
17 within the ranks of the firm he sort of moved on to be
18 an adviser.

19 Q. And are you aware of his advisory agreements?

20 A. I am aware of his advisory agreements for as long
21 as I was the person responsible for any adviser to the
22 investment bank.

23 Q. Okay. And specifically were you involved in the
24 negotiation of Dr. Marsoner's 2002 agreement?

25 A. Yes. So I became, I was in charge of that division

1 from 1998 until 2006.

2 Q. So that means you were involved in the 2004
3 agreement as well?

4 A. Yes.

5 Q. And did you sign both of these agreements?

6 A. Yes, I think I did.

7 Q. Did you sign both on behalf of Lehman Brothers
8 Europe Limited?

9 MS. ALVAREZ: Objection to form.

10 Q. You can still answer.

11 A. Okay.

12 Q. Do you want me to repeat the question?

13 A. If I signed on behalf of Lehman Brothers?

14 Q. Europe Limited?

15 A. I think so, but it must say, I mean the contracts
16 are available, so if it says Lehman Brothers. I would
17 be given, if it was companies on whose board I sat,
18 within Lehman I would sign because I had powers of
19 attorney, jointly with some other officers of the firm,
20 or individually for some contracts. If it wasn't
21 I would be told, you know, this one had better go into
22 this company, this one had better go. They would tell
23 me whether I had specific powers or I wouldn't sign it
24 at all, it would be someone else who was actually on the
25 board of that company.

1 Q. Okay. To your understanding why did Lehman
2 Brothers want to hire Dr. Marsoner as an adviser?

3 MS. ALVAREZ: Objection to form.

4 A. Mr. Marsoner continued his previous involvement, so
5 it was an evolution, it wasn't a hiring process, which
6 was quite normal with senior people who departed a full
7 time position at Lehman, they seldom -- unless they went
8 to work for a competitor, they were offered a choice to
9 stay on as an adviser, some with retainers, you know, we
10 had a lot of freedom on how to calibrate their
11 involvement.

12 Q. Did Dr. Marsoner have certain expertise?

13 MS. ALVAREZ: Objection to form.

14 A. Yes he did. By sector and by geography. He had
15 spent almost his entire working career dealing with
16 Germany and Austria and financial institutions, which
17 gave him a, for a firm that was not particularly strong
18 in that part of the world, considerable senior hedge in
19 terms of relationships and understanding of situations
20 that were not obvious, especially in situations of work
21 outs or complicated deals.

22 Q. And what about F1?

23 A. F1 was a complicated deal. So he met those
24 criterias and there were German banks involved.

25 Q. And is it correct that you were a contact person

1 under the 2004 agreement?

2 MR. HORWITZ: Objection to form.

3 A. Absolutely.

4 Q. And what did this entail?

5 A. This entailed that any decision with -- these
6 contracts were rather general in terms of which
7 transactions would be covered and so on, and I was the
8 person on behalf of the firm where these decisions would
9 be centralized; what was in it, the exact terms, we used
10 to give a grade in terms of how much the person would be
11 entitled to be paid and then, you know, for the
12 avoidance of doubt and we would interpret on a case by
13 case basis.

14 Q. Could you please look at Dr. Marsoner's motion.

15 MS. ALVAREZ: Do you have extra copies? We didn't bring
16 Sherratt's deposition exhibits with us -- we just
17 happened to have an extra copy of the 2007 annual
18 report -- since this is a separate deposition. Thank
19 you so much. And this is exhibit?

20 THE COURT REPORTER: It should say on the front. Exhibit --

21 A. 4.

22 BY MR JOHNSON:

23 Q. Could you turn to exhibit C, please.

24 A. Okay.

25 Q. And then page 22, if you see at the top, page 22 of

1 42.

2 A. Okay. Spotted it. 22, yes.

3 Q. You see listed February 13, 2004?

4 A. Mm-hm.

5 Q. And section 3, if you turn the page.

6 A. Mm-hm.

7 Q. Entitled "compensation payable to the consultant".

8 A. Yes.

9 Q. Could you explain this section of the agreement?

10 A. The section of this agreement, this was the second
11 one. There was a prior one so, you know, this was
12 stepping in. So we had decided to take part of his
13 time, so we paid an up front fee and then we paid
14 a quarterly fee and then went through the specifics of
15 the transactions that were covered and then, if I am
16 right, we had a possibility to bring under this
17 contract, subject to my green light, I think, other
18 things. So at that time we had the role in Austria, and
19 Germany, Oyagi (sic) was a distressed bank, Telekom
20 Austria were two transactions which eventually, I think,
21 all of them got done while the Donatzeinmagi (sic), as
22 I can recall, didn't happen.

23 Q. And if you turn back to the page before,
24 section 1D.

25 A. Yes.

1 Q. Is that the section you referenced? I believe you
2 referenced --

3 MS. ALVAREZ: Objection to form.

4 Q. -- that there were other transactions?

5 A. Yes, absolutely. He would attend. I mean I was,
6 I had hundreds of people under me, so I was following,
7 as the person responsible of the advisory mergers and
8 acquisitions, I was following all of the transactions.

9 But if I can recall, Telekom Austria was under my direct
10 watch, the Republic of Austria, maybe, 50 percent, the
11 BAWAG, partially, zero personal involvement, but I would
12 monitor and ask the various teams whether he was doing
13 his job.

14 Q. Mm-hm.

15 A. You know, whether he was attending the meetings.
16 These meetings would probably be mostly in Austria,
17 Germany and so on so I wouldn't attend every single
18 meeting but I get through the Monday morning meeting
19 where each of the teams who kind of report back, find
20 out, and then I would speak with Thomas whenever needed.
21 I mean sometimes it would be three times a week,
22 sometimes it would be every two weeks.

23 Q. And how is his pay determined?

24 A. His pay was determined through negotiations with
25 him and then an approval by the committee of investment

1 banking which was Skip McGee and another number of other
2 people.

3 Q. And that included you?

4 A. That included me, yes. I was the proponent, so we
5 sat through and I had, you know, to approve any
6 expenditure, any commitment of the firm I would report
7 on and seek approval prior to signing. But he was not
8 the only consultant to the group.

9 Q. Okay, what would happen when one of the agreements
10 was no longer in effect?

11 A. Normally, if it was no longer in effect we would
12 have a moment of truth as to whether the person was, and
13 I am talking in general not about Mr. Marsoner
14 specifically, I would establish whether the team felt,
15 or parts of the team that were interacting with the
16 senior adviser, would be interested in maintaining that
17 relationship and likewise I would check with the person
18 who was giving us the advice on whether they had
19 interest in providing the same level of commitment,
20 a higher level of commitment or a lower level of
21 commitment. So we would start the new contract. If
22 there was no change, we would roll it over.

23 Q. Could you please hand Mr. Pignatti the October 13,
24 2015 email.

25 THE COURT REPORTER: That is exhibit 7.

1 have enough traction from my teams to say yes, because
2 we had a budget we could spend so much on advisers. So
3 if we took one, we wouldn't have another one to maybe
4 start the new vertical, maybe to cover another country.

5 THE COURT REPORTER: Sorry, could you repeat the last bit?

6 A. We would have to decide as a team, the advisory M&A
7 team, how to spend the budget, being the person in
8 charge, it was in the end my duty to present the annual
9 budget, but also to manage the budget. So there were
10 times when the level of activity with one adviser did
11 not warrant a contract with a fixed amount, and so on.
12 So we would, say, use as a guideline the past but on
13 specific transactions you have to come to me and I will
14 sign off and sort of rejuvenate the old agreements with
15 the caveat that it may be without a fixed amount, with
16 a cap, you know, depending deal by deal.

17 I preferred, generally, to have contractors on,
18 because I had so many of them, just to remember what you
19 were doing with one or the other but it was, in the case
20 of Thomas and a few others, after a decade together we
21 could live with, sort of a play it by ear system. But
22 I would always go back to the person within Lehman, sort
23 of full time Lehman MD, and check that the work was
24 being done, that it was a realistic request.

25 Q. And so when his agreement expired how would his pay

1 be determined?

2 A. His pay would be determined the way that I do it
3 with this email, and I don't know if Jonathan responded
4 to me, but I would say these are the guidelines, this is
5 the deal, do you want me to confirm to the adviser that
6 he is on and, if so, within the usual sort of Lehman
7 scale, which I, for the avoidance of doubt repeat to
8 him; where would you place his services? Because this
9 would come off the bonus pool. So if we were introduced
10 to a deal by someone -- someone, by one of the senior
11 advisers -- we would use the net revenues for the team,
12 not the gross, so it was a team cost, it wasn't just
13 money that was flying around. So I wanted the buy in
14 not to be told at the end of the year I made
15 USD 10 million. Sorry, it is USD 8 million, because two
16 went to -- so they tended to forget on a personal basis
17 the expenses associated with the deals.

18 Q. Do you know Peter Sherratt?

19 A. Of course.

20 Q. Was he involved in determining Dr. Marsoner's pay?

21 A. No.

22 Q. And changing topics, are you familiar with
23 Cerberus' acquisition of BAWAG?

24 A. Yes.

25 Q. Was Dr. Marsoner involved in that transaction?

1 is looking at.

2 BY MR. JOHNSON:

3 Q. Can I have you look at the supplemental declaration
4 of Dr. Thomas Marsoner.

5 THE COURT REPORTER: That is exhibit 6.

6 MS. ALVAREZ: Exhibit 6 to Peter Sherratt's deposition.

7 What exhibit was that to his motion?

8 MR. JOHNSON: It was a supplemental declaration.

9 MS. ALVAREZ: Okay. Are you going to point him to his
10 letter?

11 MR. JOHNSON: I am going to point him to his affidavit.

12 MS. ALVAREZ: The one he submitted to the court.

13 A. Mm-hm.

14 MR. JOHNSON: Do you recognize --

15 MR. HORWITZ: Just a minute, I have a copy of that.

16 BY MR. JOHNSON:

17 Q. Do you see your letter dated January --

18 A. Yes, yes, yes, yes, then I am getting the dates.

19 Q. Do you see the --

20 A. Yes.

21 Q. Well, just one second. Do you see the fifth
22 paragraph?

23 A. Five, yes.

24 Q. Does it say:

25 "With regards to the investment in Formula 1,

1 I specifically requested Dr. Marsoner's advice ... after
2 JP Morgan had rejected my suggestion of jointly
3 retaining him."

4 A. Yes, yes, yes.

5 Q. Is that an accurate statement?

6 A. Yes. I now remember the, yes, the occurrence. But
7 this is prior to the actual closing of the CVC deal.
8 Now I remember. There were two stages. The first, CVC
9 took the stake and then the two banks opted out after
10 BLB. If you remind me how the transaction went, because
11 I can't recall it, because we were three shareholders
12 plus Bernie Ecclestone. When CVC did the transaction
13 who did they buy out first?

14 Q. Well, let me just ask you a question. So you
15 referred to two banks?

16 A. JP Morgan, Lehman Brothers and BLB were the three
17 investors in, or investors who had seized the shares
18 from Kirch. CVC acquired control of Formula 1 and then
19 subsequently acquired an additional stake.

20 Q. Why did you request Dr. Marsoner's advice?

21 A. At the time there was a dilemma as to what to do,
22 whether to accept the proposal, but I can't remember if
23 it was the first purchase or the second purchase,
24 because the clients of Formula 1 and the teams headed
25 by, they were using Goldman Sachs at the time, but they

1 were voicing and saying that they did not intend to
2 continue with Formula 1 and they wanted to create
3 a rival event which technically they could have possibly
4 done, and obviously the value of Formula 1 would have
5 been completely different if some or most of the teams
6 migrated to another event.

7 So the issue was strategically was this asset going
8 to be a difficult one or was this all posturing, and all
9 it took was to tweak the margins and have them make
10 a little bit more money and change the team versus
11 Formula 1 split. And this had been going on for some
12 time, I recall. But when CVC came in it became even
13 more antagonistic from Mercedes, from, you know, the
14 leading teams.

15 Q. And who were the leading teams?

16 A. The leading teams were Mercedes, McLaren, Ferrari
17 to some extent, but at least it was the only one where
18 I had my direct contacts. But I didn't, because the
19 firm was not very strong in automotive, we didn't have
20 direct links, especially with the Germans and then
21 Goldman was trying its best to make sure we didn't have
22 access to anybody who sang outside of the choir.
23 I asked Thomas, and the other thing that I needed to
24 know from, you know, to give the firm some advice, was
25 where things stood with BLB, because, you know, it

1 became a very big issue and even at the time there were
2 issues around it. And that is where he was kind of
3 fished out. But now, this is 2005. I can't remember if
4 he was still under the mandate or not, maybe it was,
5 which of the various mandates that Thomas had, whether
6 it was covered or not.

7 Q. Do you remember the advice that he provided?

8 A. He provided, he took some time to provide it, but
9 he managed to speak directly with, I think McLaren was
10 one of the ones where we didn't have an clue as to, you
11 know, how to contact them because they were not --
12 Mercedes, at least you do fixed income with them.
13 McLaren is not an entity that we were banking. But also
14 through the banking circles in Germany it is hard to
15 understand where things stood with the teams, whether
16 they were prepared. Because the migration to a new
17 event would have meant, for the auto manufacturers who
18 decided to do that, probably taking three steps back in
19 terms of visibility and so on, before it was up and
20 running and, you know, Formula 1 had already been going
21 for decades at the time. So he was instrumental in
22 understanding whether it was a bluff or it was real.
23 Q. So in your view did Dr. Marsoner provided
24 invaluable advice?

25 MS. ALVAREZ: Objection to form.

1 A. Obviously in retrospect at the time the advice was
2 his understanding of the situation. In retrospect it
3 was right.

4 Q. To your understanding did Lehman Brothers rely on
5 Dr. Marsoner's advice?

6 A. I think this was debated at the investment
7 committee and as the pros and cons, and I think it was
8 one of the elements, certainly not the only element. If
9 I remember correctly the way that it was presented, as
10 I was saying before, it wasn't me presenting it, it was
11 either Jeremy Isaacs or Meissner.

12 Q. Okay.

13 A. As it was a European issue, where it was how much
14 money do we have this investment on the books at? How
15 much are we getting back, if we do at all? How much are
16 we getting, and they did the calculation how much, you
17 know, the firm needed as a capital gain -- capital gain;
18 writing back of an investment -- and how much we could
19 afford to, you know, take a punt on future values.

20 Q. And in your view do you believe Dr. Marsoner should
21 be paid for that advice?

22 MS. ALVAREZ: Objection to form.

23 A. I think, yes, he would be, he would have been paid,
24 I would say, in retrospect. I don't know the ins and
25 outs of what specific authorizations he, you know,

1 worked at the time but I think the firm would have taken
2 -- you see our agreements were the senior advisers were
3 very one sided. So I mean once there was a negotiation,
4 we could say okay, it is between X and Y, but then it
5 would be the sole discretion of the firm how much to
6 pay, and if you liked it you stayed, if you didn't like
7 it that was the way we worked. But on the other hand we
8 never left, we never asked for any advice, work and so
9 on to then not pay anything. It was just not done and
10 certainly under my watch it never happened. The
11 amounts, though, would be determined, even post facto.

12 Q. Was the type of advice he provided on F1 similar to
13 in the BAWAG transaction?

14 MS. ALVAREZ: Objection to form.

15 A. It was similar. It was similar in terms of advice.
16 The difference was that here it was an exit or not
17 an exit of an existing position. BAWAG was really
18 driven as an advisory mandate. You know, it was more of
19 an investment bank. Here, the firm owned a position,
20 willingly or unwillingly, and he provided advice in
21 terms of tactics, the same as BAWAG, but for a different
22 purpose.

23 Q. Do you know the Lehman entity used to reinvest in
24 F1?

25 A. No. I mean do I know it, maybe I knew, because --

1 Q. Okay, great.

2 So what I would like to start off with, I would like
3 to mark as exhibit 1 to Mr. Pignatti's declaration,
4 Lehman's notice of deposition.

5 THE COURT REPORTER: You need to have the one I have marked.

6 (Exhibit Pignatti 1 marked for identification)

7 Q. This is a notice of deposition of Vittorio
8 Pignatti-Morano, it is signed by Jacqueline Marcus of
9 Weil, Gotshal & Manges. Have you seen this before,
10 Mr. Pignatti?

11 A. Yes I believe I was sent it.

12 Q. Okay, I just wanted to make sure that you saw it.
13 At the end it says LBHI intends to cross-examine the
14 witness for approximately 3 hours, do you see that?

15 A. Yes.

16 Q. We are hoping to do it in less time. We will try
17 our best.

18 You told us a little bit about your employment at
19 Lehman Brothers earlier today. I want to clarify, did
20 you hold a board position at Lehman Brothers?

21 A. I was on the operating committee. I was on the
22 board of some of the companies.

23 Q. Okay. Were you on the board of Lehman Brothers
24 Holdings Inc?

25 A. No.

1 Q. Okay. What about Lehman Commercial Paper Inc?

2 A. No.

3 Q. Okay. So I would like to talk to you a little bit
4 about how you prepared for this deposition today. What
5 did you do to prepare for the deposition?

6 A. I went through the two contracts that I had, just
7 to remind myself of the time frame, and that is pretty
8 much it.

9 Q. Okay. Did you speak with anybody about the
10 deposition?

11 A. No. I was asked to do it.

12 Q. Okay.

13 A. Mr. Marsoner told me roughly why. He felt it was
14 needed and I agreed, given that we worked together and
15 I was, you know, happy to give my side of my
16 contribution to the dispute.

17 Q. What did Mr. Marsoner say about the matter?

18 A. The matter? That it was concerning, you know, the
19 advice given in the period when I was responsible and
20 afterwards.

21 Q. Okay. Did he tell you anything specifically about
22 the agreements?

23 A. The agreements he didn't need to tell me much
24 specifically; I signed them so I can answer on those.
25 And he gave me some background that the dispute is also

1 knew his part; a large organization, he knew the equity
2 investment, which was hundreds of millions of Euros, had
3 gone really badly and there was a positive recovery on
4 the loan.

5 Q. Okay. And when you were looking for documents to
6 prepare this deposition, did you look for any documents
7 showing that Lehman would pay Dr. Marsoner for
8 Formula 1?

9 A. No. I actually was looking at -- the documents
10 that I have were all of the ones under my watch. So
11 I would have known what Lehman, I represented Lehman.

12 Q. Mm-hm.

13 A. To a large extent. So I was looking to see what
14 exactly were -- sort of brushing up on the course of
15 events and in which years was I working on --

16 Q. Okay. Did you look for any agreements that covered
17 Formula 1 with Dr. Marsoner?

18 A. Yes.

19 Q. And did you find any?

20 A. No, not under my watch. It was not specifically
21 mentioned. I found some emails on sort of advice
22 provided. Prior to the sale to CVC there was the dates
23 confusion.

24 Q. Okay.

25 A. And the events with CVC was done in 2006. That was

1 the time when I changed jobs within Lehman, so this was
2 across, the discussion was prior, and it took, I think,
3 a long time between handshake and actually doing the
4 agreement with CVC.

5 Q. Okay. And we are going to go through some
6 documents which will hopefully help you with the
7 timeframe as well.

8 A. Sure.

9 Q. I would like to take a look at the letter you had
10 submitted to the bankruptcy court, which was marked
11 exhibit 6 to Peter Sherratt's deposition that we looked
12 at earlier.

13 A. January 7?

14 Q. Yes, January 7. Let us mark this as exhibit 1 to
15 your deposition, just so that we have a uniform set.

16 THE COURT REPORTER: 2.

17 MS. ALVAREZ: Oh, the notice was 1. Okay, we will mark this
18 as exhibit 2.

19 A. Want to put the label? I am getting the gist of
20 it. It is already labeled as 6. Do you want to remove
21 it?

22 THE COURT REPORTER: No. It is already labeled from the
23 previous deposition. Do you want another label on it?

24 MR. VAN TOL: This is Pieter. I don't understand why you
25 are remarking the exhibits have already been marked,

1 MR. JOHNSON: Objection to form.

2 A. As I say, we did not issue, it was difficult enough
3 to decide, we did not need two and certainly they were
4 senior people, the whole firm was involved in making the
5 decisions, because as I said before, there was lots of
6 egg on our face and a huge amount for Europe especially.
7 It was one of the few big losses in Europe and therefore
8 there was a lot of attention and decisions were taken in
9 a collegiate way but without needing an explanation.

10 Q. Okay. And after Lehman had acquired these shares
11 as a result of Kirch's default, a team, a work out team,
12 was put together to handle this investment, correct?

13 A. Yes.

14 Q. And --

15 A. For many years, because it must have been 2002/3
16 that we exercised the pledge, jointly with JP, BLB.

17 Q. Okay.

18 A. And then for a number of years we discovered that
19 the governance was very opaque. But the key people, you
20 saw them listed before were people working in my
21 department called Patrick Schmitz-Morkramer and Patrick
22 Bierbaum and on the legal side Peter Sherratt.

23 Q. Okay. And I would like to mark this next document
24 as Pignatti 3, the Bates range on the document is Lehman
25 222 through Lehman 224.

1 Q. Okay.

2 A. So he was kept informed. But just like Magnoni had
3 been taken out of the day by day decision making, so the
4 fixed income for the originated loan likewise.

5 Q. Okay.

6 A. Steve Hannan, I don't remember what his role was.
7 Patrick Schmitz-Morkramer was the boss of Bierbaum. He
8 reported to me. To, he had a dual task, to ideally help
9 the firm recover both on the equity investment, so this
10 was not the only assignment they had, but at least on
11 the equity investment we were on our own, we didn't have
12 a JP Morgan and BLB. Instead on this one we had Klaus
13 Diederichs of JP Morgan and, even worse, the BLB
14 executives, who did not necessarily see eye to eye with
15 us. So every decision had to reach first the quorum
16 among the banks and then be discussed. So that is what
17 took up most of Patrick Bierbaum's time.

18 Q. Okay, and Peter Sherratt is identified here as
19 well. He was legal counsel?

20 A. Absolutely.

21 MR. JOHNSON: Objection. Leading.

22 A. Hmm?

23 MR. JOHNSON: I just made an objection.

24 Q. You can answer the question. Peter Sherratt was
25 legal counsel, correct?

1 MR. JOHNSON: Objection. Leading.

2 A. Correct, to the firm in Europe and particularly to
3 the thorny transactions like this one that involved
4 everything, including reputation. As I said, this was
5 not an investment, this was a work out.

6 Q. Okay. And Tom Bernard was the lead of the work out
7 team?

8 MR. JOHNSON: Objection. Leading.

9 A. Tom Bernard was one of the most senior people on
10 the principal investment in New York, and sort of
11 trusted by the top of the firm to supervise any
12 complicated recovery. He was also supervising the Prop
13 Principal Investments. So actually, functionally, his
14 interests should have been more on the equity investment
15 that had turned sour than the fixed income, but given
16 that in the end they resulted in one big mess, we kind
17 of pooled the working team.

18 Q. Okay.

19 A. But he was instrumental in getting sort of New
20 York's buy in into any decision that Europe made.

21 Q. Okay, at the time this email was
22 prepared, October 22, 2002, around that time, Lehman and
23 JP Morgan were considering jointly retaining
24 Dr. Marsoner?

25 MR. JOHNSON: Objection. Leading.

1 MR. JOHNSON: Objection. Leading.

2 A. My task was a different task. Okay, at that time
3 the stake was unsaleable.

4 Q. Okay. Thank you.

5 A. We owned 75 percent interest in a holding company
6 that an agreement with another holding company in
7 Guernsey and so on, and Peter Sherratt, give him credit,
8 and us, the banking team in three years would change
9 that situation. Not smoothly, you know, through even
10 court cases and so on. We at one point to eliminate the
11 BLB representative, who in theory was working on our
12 behalf, and finally some changes took place.

13 Q. Okay.

14 A. Which then led Bernie Ecclestone to become much
15 more amenable to a sale. Rather than having three banks
16 being difficult and so on, they saw that we were quite
17 effective in making his life not so easy.

18 Q. Okay.

19 A. Had it been only BLB, I think he would still now
20 age 84 control the company with 25 percent and make all
21 of the decisions single-handedly.

22 Q. Okay. So at this point you considered retaining
23 Dr. Marsoner. The decision was made not to retain him
24 in 2002, correct?

25 MR. JOHNSON: Objection. Leading.

1 A. That is correct. I think JP came back saying,
2 well, you know, for us, you know, JP, Lehman and we take
3 a Lehman guy, you know, it sounds like we are giving you
4 the keys and so on. You know, if you want to, we would
5 be delighted if you add him to the team at your expense.

6 Q. Okay.

7 MR. JOHNSON: Just to point out the objection to leading is
8 based on the fact that he is not a hostile witness, he
9 is an ex employee of Lehman Brothers.

10 MS. ALVAREZ: You can take that position. We are taking the
11 position that he is a friendly witness to Dr. Marsoner
12 so he would be a hostile witness to Lehman Brothers. He
13 is no longer employed with Lehman Brothers.

14 MR. JOHNSON: He is an ex employee, though.

15 MS. ALVAREZ: That is fine.

16 MR. VAN TOL: This is Pieter. And unless you establish
17 a foundation, none of your questions are admissible.

18 MS. ALVAREZ: Well, that is really for the court to decide.
19 So we will move on.

20 BY MS. ALVAREZ:

21 Q. I want to jump head, that is 2002. I want to jump
22 ahead three years, let us jump ahead to 2005. In 2005
23 you learned that CVC Capital was considering making
24 an offer to Lehman to purchase the Formula 1 shares,
25 correct?

1 Now, I want to look at what has been marked as
2 Pignatti exhibit 2, which is the letter you submitted to
3 the court, Mr. Pignatti, could we look at it again. And
4 on the second page, the very last paragraph, you state:

5 "It was my understanding that Dr. Marsoner would
6 have been paid by Lehman Brothers for his services
7 concerning the F1 investment or I would not have asked
8 him to help."

9 What was the basis for your understanding?

10 A. My understanding is that, as I think I mentioned
11 before, we had a long consolidated relationship with our
12 senior advisers which was regulated by contracts but
13 they were completely one sided. You might have read
14 them.

15 Q. Mm-hm.

16 A. It says if the firm decides that you had a major
17 involvement in a transaction. So completely left to our
18 discretion, the firm's discretion. And therefore we
19 were instructed to use this power, not
20 opportunistically, but bearing in mind that we had
21 a name, a future and we had to keep our senior advisers,
22 you know, happy.

23 Q. Mm-hm.

24 A. But within, you know, the boundaries of the
25 economic interests of Lehman. And therefore, as you can

1 see from previous emails and so on, any time we utilized
2 the senior adviser, not just myself, but also other
3 people on the team, and it was a large organization,
4 I wanted it to be flagged, because if we agreed to use
5 we would then remunerate. I cannot tell you how much,
6 it depended on our good will, on a discussion with
7 a person and so on, but we wouldn't utilize someone
8 outside of the contract to tell them thank you very
9 much, it was free help, and so on. Otherwise we would
10 not have been as successful as we were in retaining very
11 high caliber people for relatively low fixed amounts of
12 money.

13 Q. Okay. So when you got to that point, you realized
14 that someone needed to be remunerated, you would have
15 a conversation with that person about how much?

16 MR. JOHNSON: Objection. Leading.

17 A. Absolutely. I would have discussed the specifics
18 of something that was not in the contract and would have
19 had an internal discussion and then I would have gone
20 back with a response. It was a negotiation to a certain
21 point.

22 Q. Okay. And then ultimately you would need to get
23 approval from someone more senior?

24 MR. JOHNSON: Objection. Leading.

25 A. Depending on if it was the acquisition of a M&A

1 advisory and so on. I had my guidelines and I could
2 move on. I would specify, because in an advisory
3 mandate you are getting a success fee and a retainer
4 fee. So it is all, you are sharing profits with a third
5 party and I would have documented that and the contract
6 would have been seen and approved by Peter Sherratt and
7 others, and we actually had a person under Peter in our
8 division, in legal. So everything would be documented.
9 But it wasn't a payment that came from the balance sheet
10 of the firm, it was a forgone revenue, because they were
11 all success based. And the fixed amount would be
12 budgeted in my division, so at the beginning of the year
13 I get so many millions in external expenditures; so much
14 for travel, so much for advisers and so on. The
15 variable part would be a deduction of revenues, so quote
16 unquote, since my guys were all on a percentage bonus
17 pool calculated, so obviously it was an investment made
18 by my division and I had the authority within those
19 boundaries to use my best judgment.

20 Q. Okay.

21 A. Okay. If, on the other hand, it was the sale of
22 an asset owned by the firm -- there weren't that many --
23 and that would have been always remunerated but dealt
24 with in a different conceal.

25 Q. Okay.

1 A. So someone who brought an advisory mandate, you
2 know, we would pay 10 to 20 percent. There were no
3 specific incremental costs associated to it and we would
4 consider the standard or 10 percent range. If it was
5 a percentage of a gain, then you would be talk about 1
6 or 2 percent, so it was a completely different scale.

7 Q. Okay.

8 A. Because there was a risk associated if it was a new
9 principal investment or in the case of something on
10 balance sheet it normally came from a loss, so imagine
11 it was an additional investment in. So that would have
12 been approved ad hoc.

13 Q. Okay. I want to make sure I understand the
14 difference. So where there is an advisory mandate,
15 an example of that would be the BAWAG transaction in
16 2006?

17 A. BAWAG.

18 MR. JOHNSON: Objection. Leading.

19 A. BAWAG had, a dual, I think, we can look it through,
20 had two components, because in BAWAG it was a major
21 advisory mandate that we would not have gotten unless we
22 had, for example, Thomas Marsoner in, a person on site
23 in Vienna dealing with the politics, the bankruptcy and
24 so, so it was better to pay him 10 percent of the
25 revenues than not to get the mandate.

1 Q. Okay.

2 A. The second component of BAWAG was that the
3 mezzanine fund of the firm intended to invest, and if
4 they invested they were willing to pay a fee, sort of
5 a finders fee, for having been brought into this
6 investment opportunity, but that would have been 1
7 percent, or -- I can't remember what the amount was. So
8 those were the orders of magnitude.

9 Q. Okay. So it sounds like Dr. Marsoner was
10 instrumental in that BAWAG transaction?

11 A. He was. First, in securing a mandate for which we
12 were probably not the best qualified without him. And
13 then the mandate lasted for a long time. He managed to
14 bring to the Lehman mezzanine fund a position in the
15 financing. That was a typical thing that happened with
16 advisory mandates, many times, led to additional firm
17 revenues which were not in advisory.

18 Q. Okay.

19 A. Okay. Those were remunerated because the egg came
20 before the chicken and therefore, you know, the same
21 scale did not apply. So that would have been outside of
22 my powers, to add a fee for another division, risking
23 capital, because it was really up to them to say whether
24 they could afford, and how much. But I certainly made
25 sure that if they utilized the referral from an adviser

1 at the investment bank they would have to pay. I would
2 participate in the negotiation but I couldn't force them
3 to pay out of their budget more or less.

4 Q. Okay. So when the BAWAG transaction was completed,
5 Lehman and Dr. Marsoner came to an agreement regarding
6 how much he would be paid for his help?

7 MR. JOHNSON: Objection. Leading.

8 A. Yes.

9 Q. Now, you mentioned when you were explaining the
10 differences to me --

11 A. Mm-hm.

12 Q. -- that the sale of an asset situation is
13 different?

14 A. Yes.

15 Q. Formula 1, would that fall into that category of
16 transaction, sale of an asset?

17 MR. JOHNSON: Objection. Leading.

18 A. It was the sale of an asset and therefore there
19 wasn't a mandate originating fees for -- you know, we
20 were not getting paid, you know, inside of the
21 investment banking division there wasn't an advisory fee
22 of 3 million that Formula 1 was paying to Lehman.
23 Because we owned the company, or co-owned, we couldn't
24 charge any fees, so it would have come out of pocket
25 from the firm. Therefore it happened, you know, several

1 times.

2 Q. Mm-hm.

3 A. So it would have been calculated and it wouldn't
4 have been zero, you know, otherwise the firm would never
5 -- if I had received an email from a discontinued
6 adviser telling me "I want to do this", you know, "let
7 me give you advice", I would stop him straight away and
8 say I am sorry, but we spoke three weeks ago. I have
9 now socialized with the operating committee, I think we
10 have moved on. So I wouldn't use people for free,
11 especially if they had been with the firm for 10,
12 15 years --

13 Q. Mm-hm.

14 A. -- to lead them on. I would be quite firm and say
15 thank you very much, you know, bring it to Goldman
16 Sachs, these are great ideas, thanks. We wouldn't use
17 free help --

18 Q. Right.

19 A. -- from people with whom we had a relationship that
20 we still treasured in any shape or form. On the
21 advisory side we wanted to be promoted as the right bank
22 in an area or geography where we were not strong, we
23 wouldn't short change them or use them on something we
24 had no intention to use them, and that is my statement.

25 Q. Right, I understand that. So with Formula 1, who

1 would decide whether Dr. Marsoner would get paid for
2 Formula 1?

3 A. Specifically on Formula 1, it would have been
4 Bernard, Isaacs, Meissner.

5 Q. What about Peter Sherratt?

6 A. Peter Sherratt on the legal side, obviously he
7 would have been one of the most listened to people in
8 Europe and so on, but he didn't -- of course, being
9 a member of the operating committee, the one who oversaw
10 anything signed by a Lehman executive, you know, myself,
11 copy would go to, you will find it in the internal memos
12 of Lehman where everything went and to which companies,
13 to who and everything else. If something jumped to the
14 eye, Peter would call the person saying, you know, what
15 is going on here. Normally we pay 10 percent but here
16 you have paid 35 percent, you know, let us get to the
17 root of that. He wouldn't be leading, you know, he
18 would be objecting that something was either unethical,
19 or, you know, he would check whether anybody we paid as
20 a senior adviser was in conflict of interest because
21 maybe he was working for the company that was being
22 advised, or things like that.

23 Q. Okay. Thank you, that is very helpful.

24 I want to look at another document that I believe
25 has been marked. Lehman 204. I am just trying to get

1 a record of the exhibit number. I believe it was marked
2 during Peter Sherratt's deposition and you used it
3 earlier. You don't need to mark it, he has one copied.
4 Exhibit 5 should be in front of you somewhere. Okay.
5 This is an email string. We have three emails there.
6 The top email is dated November 26, 2005 from Tom
7 Bernard. I would like to focus on the email at the
8 bottom of the string which would have been the first
9 email that we sent. It is from Thomas Marsoner
10 dated November 25, 2005. It is to you, Mr. Pignatti --
11 A. 26th?
12 Q. Oh, the 25th, the email on the bottom of the page.
13 A. Okay, sorry.
14 Q. Do you see it is from Marsoner to you?
15 A. Mm-hm.
16 Q. Okay. The very first line says:
17 "If this is the deal I suspect it is, my senior
18 advice is (strongly) against selling out now."
19 Do you see that?
20 A. Mm-hm, yes.
21 Q. And then Dr. Marsoner identifies the reasons why he
22 would not sell out?
23 A. Mm-hm.
24 Q. Okay. And then at the very second to last
25 paragraph, the paragraph that begins "needless to

1 say" it says:
2 "Needless to say, if a "fresh face" were helpful to
3 facilitate things here, mine continues to be available
4 for a very modest percentage participation in LB's gain
5 upon eventual sale."

6 Do you see that?

7 A. Yes.

8 Q. Okay, I want to make sure I understand.

9 A. Yes.

10 Q. Dr. Marsoner here was offering to be what he called
11 a fresh face in coordinating a response --

12 MR. JOHNSON: Objection. Form.

13 Q. -- for all of the banks?

14 MR. JOHNSON: Objection. Form.

15 A. He was offering to say if -- I see, 25 November,
16 yes. What he is saying is if you have reached the stage
17 where you want to do a sale, then do a total sale and if
18 you agree I will be more than happy and, because he was
19 not covered by advisory, specifies that it would be
20 a small percentage and so on, because even if we had,
21 you know, at the time, I can't remember if it was still
22 the old agreement or whatever, it wasn't going to fall
23 into an investment banking advisory agreement. That
24 much he knew.

25 MR. JOHNSON: Just for the record, Pieter has left the video

1 conference. He is going to be dialing in soon.

2 MS. ALVAREZ: Okay.

3 BY MS. ALVAREZ:

4 Q. So Dr. Marsoner was offering to coordinate
5 a response to CVC?

6 MR. JOHNSON: Objection. Leading.

7 A. I think it was more offered internally to see
8 whether the deal could be, you know, improved, limiting
9 the size of the stake that was being sold.

10 Q. Okay. And he was suggesting that he would do this
11 for what he called a modest fee?

12 MR. JOHNSON: Objection. Leading.

13 A. Yes.

14 Q. So he is offering to facilitate things in exchange
15 for a percentage upon LB's eventual sale?

16 MR. JOHNSON: Objection. Form.

17 Q. You never took him up on this offer, correct?

18 MR. JOHNSON: Objection. Leading.

19 A. I never took him up. I think I passed on the
20 information to the people --

21 Q. To whom?

22 A. To Bernard, and, you know, and the others. Maybe
23 verbally on a call, and I said guys, this is a view.
24 And that was a time when this was, you know, a debated
25 issue at Lehman as to what to do.

1 Q. And to your knowledge, Tom Bernard never took him
2 up on the offer, correct?

3 MR. JOHNSON: Objection. Leading.

4 A. I don't know. There certainly was an exchange of
5 emails with Tom Bernard.

6 Q. Do you know if Tom Bernard retained Dr. Marsoner to
7 coordinate a response to CVC?

8 A. I don't know.

9 MR. JOHNSON: Objection. Form.

10 Q. Peter Sherratt didn't take him up on the offer,
11 correct?

12 MR. JOHNSON: Objection. Leading.

13 A. I don't think it would have been Peter Sherratt's
14 task to sign up a non-legal adviser.

15 Q. Well Jeremy Isaacs didn't take him up on the offer?

16 MR. JOHNSON: Objection. Leading.

17 A. Okay, that would have been the sort of person.

18 I don't see Christian Meissner. Maybe it was before he
19 stepped in.

20 Q. Did Jeremy Isaacs take him up on the offer?

21 A. Not that I know.

22 MR. JOHNSON: Objection.

23 A. He is the only one who could have retained
24 an adviser for corporate Europe, for example. That
25 would be him.

1 were people from finance, legal, so on and not the line
2 managers.

3 Q. Okay, that's fair. So regardless of Lehman
4 entity --

5 A. Mm-hm.

6 Q. -- you have no writings indicating that Lehman
7 agreed to pay Dr. Marsoner for Formula 1, correct?

8 MR. JOHNSON: Objection. Leading.

9 A. That is correct. I used in this sentence my
10 experience and the fact that I received information from
11 Mr. Marsoner. I distributed it and it created
12 a dialogue with a follow up. So he didn't get an email
13 saying thank you very much, as I would have done in the
14 same situations in my division. If there was an adviser
15 that I thought was no longer going to be utilized
16 I would not have exploited that person, I would have cut
17 the mail flow by saying thank you very much,
18 I appreciate it. It sounds like a great idea. Feel
19 free to take it where ever. In this case, obviously,
20 that didn't apply because who could this idea -- it
21 could only be sold to Lehman or JP Morgan.

22 Q. And normally you would have eventually documented
23 an agreement to pay?

24 A. Yes, absolutely.

25 Q. In writing?

1 MR. JOHNSON: Objection. Leading.

2 A. Even post facto in the sense, as I told you,
3 because we operated with a completely one sided
4 methodology, and therefore I didn't need to document
5 things immediately. I did because it is my practice to
6 do these things, but it was not necessary because if we
7 wanted we would do it. But the policy of the firm was
8 if we used someone considerably, we would then price the
9 services. If it was someone that was a trusted adviser
10 with other contracts and so on, we would not have them
11 work unless we intended to remunerate them. That
12 doesn't define the amount.

13 Q. And then eventually you would negotiate a price
14 with the adviser?

15 MR. JOHNSON: Objection. Leading.

16 A. Basically we would tell the adviser what the price
17 was going to be.

18 Q. And document it in writing?

19 A. Yes.

20 MR. JOHNSON: Objection. Leading.

21 A. We would not pay not inconsiderable amounts without
22 a valid reason and all documentation.

23 Q. And getting approval from the senior people at
24 Lehman?

25 MR. JOHNSON: Objection. Leading.

1 A. In this particular case it was only the senior
2 people in Lehman dealing with the person, so it was
3 a matter of putting it down on paper and we would be
4 told which company it would be and then, you know, we
5 could make the payment. We could not make a payment
6 without any form of contract or anything, but in many
7 cases it would just be if there was an existing contract
8 pertaining to a general adviser and so on, then we would
9 write an addendum to that contract, dating it and so on,
10 and saying as per point six we consider the BAWAG
11 transaction a success and therefore associated with this
12 the fee of 1 percent in the scale provided in, you know,
13 and then we would pay.

14 Q. Okay. I want to make the declaration of
15 Dr. Marsoner as the next exhibit. We are getting close
16 to a break. What number is this?

17 (Exhibit Pignatti 4 marked for identification)

18 THE COURT REPORTER: 4.

19 Q. Okay. That is the document exhibited by
20 Dr. Marsoner, it is actually exhibited to his motion.
21 Have you seen this before, Mr. Pignatti?

22 A. No.

23 Q. No. I want to focus on a particular paragraph. If
24 you go to paragraph E on the bottom of page 2.

25 "In 2005 I advised Lehman in my role as senior

1 adviser, both in emails and in telephone conversations,
2 to continue Lehman's investment in F1, which service
3 I explicitly provided in exchange for 10 percent of
4 Lehman's revenues related to the transaction, as was
5 customary under the agreements. Lehman agreed, both
6 orally and by email, to this fee in exchange for my F1
7 advice."

8 Do you see that?

9 A. Mm-hm.

10 Q. Do you know who agreed orally to pay Dr. Marsoner
11 10 percent of Lehman's revenues?

12 MR. JOHNSON: Objection.

13 A. No I don't.

14 Q. Do you have any emails where Lehman agreed to pay
15 Dr. Marsoner 10 percent of Lehman's revenues on F1?

16 MR. JOHNSON: Objection.

17 A. No I don't.

18 Q. Did Dr. Marsoner ask you to search for any such
19 emails?

20 MR. JOHNSON: Objection.

21 A. No.

22 Q. Did he ask you to search for any documents
23 indicating that he would be paid 10 percent of Lehman's
24 revenues for F1?

25 MR. JOHNSON: Objection.

1 A. No.

2 MS. ALVAREZ: Okay, I think we are ready for a break.

3 THE VIDEOGRAPHER: We are going off the record. The time is

4 5:52 p.m.

5 (5:52 p.m.)

6 (Break taken.)

7 (6:07 p.m.)

8 THE VIDEOGRAPHER: We are back on the record. The time is

9 6:07 p.m.

10 BY MS. ALVAREZ:

11 Q. Mr. Pignatti, you testified earlier that you were
12 involved in the negotiations of Dr. Marsoner's 2002 and
13 2004 executive advisory agreements, is that right?

14 A. Yes.

15 Q. Okay. Did you negotiate many of these agreements
16 for Lehman Brothers?

17 A. Mm-hm.

18 Q. Okay. The purpose of this agreement is to set
19 forth the terms of the agreement, is that correct?

20 MR. JOHNSON: Objection. Leading.

21 A. Yes.

22 Q. The term determine or and duration of the
23 retention?

24 MR. JOHNSON: Objection. Leading.

25 A. Yes.

1 Q. The responsibility of the consultants?

2 A. Yes.

3 MR. JOHNSON: Objection. Leading.

4 Q. Also the responsibilities of Lehman Brothers would
5 be laid out in a consultant agreement correct?

6 MR. JOHNSON: Objection. Leading.

7 A. You have the agreements. They are standard
8 agreements that specify the restrictions on the side of
9 the adviser and not many on the side of the firm.

10 Q. Okay.

11 A. But they do specify the framework and then they
12 have a sentence, all of them, that says anything else
13 that comes out will have to be interpreted by the firm
14 within the guidelines of the contract.

15 Q. Okay. And agreed to in writing, correct?

16 MR. JOHNSON: Objection. Leading.

17 A. Yes. But we have the contracts, we can go through
18 them.

19 Q. We are going to look at them in a moment.

20 A. Mm-hm.

21 Q. I just want to get an understanding of how these
22 agreements generally work. Let us talk about the 2004
23 advisory agreement. The 2002, I am sorry. I don't
24 believe it has been marked yet so we will go ahead and
25 mark it. What number are we on?

1 THE COURT REPORTER: 5.

2 MS. ALVAREZ: Okay.

3 (Exhibit Pignatti 5 marked for identification)

4 BY MS. ALVAREZ:

5 Q. Now I represent to you that this exhibit was

6 attached as exhibit C to Dr. Marsoner's motion.

7 A. Mm-hm.

8 Q. This is the 2002 agreement between Lehman Brothers

9 Europe Limited and Thomas Marsoner, correct?

10 A. Yes.

11 Q. The date of the agreement is July 24, 2002?

12 A. Yes.

13 Q. One thing I was curious about, if you look at the
14 bottom of the first page it says "page 71". Do you know
15 why this agreement starts at page 71?

16 A. I have no idea.

17 Q. Okay.

18 Now, this agreement was signed by you on behalf of

19 Lehman Brothers Europe Limited, correct?

20 A. Mm-hm.

21 Q. Correct?

22 A. Yes.

23 Q. Dr. Marsoner signed on his own behalf?

24 MR. JOHNSON: Objection. Form.

25 Q. Let's look at it. It says page 79 on the bottom.

1 A. Yes.

2 Q. Okay. And the period of this agreement, the
3 commencement date, was March 1, 2002. And you can turn
4 to, it is the second page of the agreement.

5 A. Mm-hm. Yes.

6 Q. And the agreement terminated on March 1, 2003. And
7 you can see that on page 77. Do you see that?

8 Section 10.1 says:

9 "This agreement shall expire automatically on the
10 first anniversary of the commencement date."

11 A. Yes.

12 MR. JOHNSON: Objection. Form.

13 Q. Okay. Now, the information --

14 A. If you notice, also, 10.3.

15 Q. "Notwithstanding clause 10.1 of this agreement,
16 either party may terminate this agreement by giving 4
17 weeks' notice writing."

18 I see that.

19 A. Mm-hm.

20 Q. Did anybody terminate this agreement prior to the
21 termination date?

22 A. No. This is to point out the nature of these
23 agreements and the flexibility, when I said it was
24 totally one sided and therefore we did not need, you
25 know, to really pre-agree everything when in the

1 nebulous world of investment banking -- because all of
2 the ammunitions, I mean you can see that everything
3 could be terminated four weeks. This is not
4 a standard -- it is a standard for this industry.

5 Q. So it is a standard agreement that Dr. Marsoner --
6 standard consultancy agreements contain provisions like
7 this?

8 A. Yes.

9 MR. JOHNSON: Objection.

10 A. The value in the agreement is in the relationship
11 with the firm because, being totally one sided, he was
12 certainly used to the fact the parameters overall were
13 spelt out. But his entitlement was totally
14 discretionary on the firm's side.

15 Q. Okay. Well, let's take a look at section 3 of this
16 agreement. Section 3 describes the payments that would
17 be made by Lehman Brothers Europe to Dr. Marsoner,
18 correct?

19 A. Payments, mm-hm, yes.

20 Q. Is that a yes?

21 A. Yes.

22 Q. Okay. If you look at 3.1.1, provides that Lehman
23 Brothers Europe would pay Dr. Marsoner a retainer fee of
24 USD 200,000.

25 A. Yes.

1 how many I signed over the decade that I was
2 responsible.

3 Q. Okay.

4 A. This is the catch all that I was describing before.

5 Q. Mm-hm.

6 A. As the agreement, you will agree with me, is
7 totally one sided. We would have annual agreements.
8 You know how long it takes for these major transactions
9 to move ahead or not move ahead.

10 Q. Mm-hm.

11 A. So it would be too tedious to do a continuous
12 negotiation on everything that comes up. What you do is
13 you list the major things that were covered because they
14 are probably -- I think Telekom Austria was probably
15 already a year old, from the previous agreement if there
16 was one. It was the privatization of a major telecom
17 company, and BAWAG took a year to get done.

18 During this period there would be many things where
19 the adviser would say "can I work on this?" I would ask
20 team members, and this is on the advisory side --

21 Q. Mm-hm.

22 A. -- does this really make sense? Are you really
23 going to use him? What is the contribution and
24 monitoring? And so on. And then I would ratify what
25 I thought, in my judgment or, if more people were

1 involved, in our judgment, was the contribution and in
2 the following contract, or even in this one, I would say
3 as per 3.2.1 we now agree to pay you, you know,
4 a million dollars for securing the Formula 1 advisory
5 mandate, okay, something like that.

6 Q. Okay.

7 A. Not necessarily when it happened, the day, or don't
8 lift your pen until I have sent you a confirmation and
9 so on, okay.

10 Q. Okay.

11 A. But this refers to advisory contracts which were,
12 as I said, within my powers because my division was
13 paying it out of revenues, okay. So here the
14 USD 200,000 would have come out of my annual budget,
15 because it was a guarantee. And then anything else, you
16 will see, is really a success fee and therefore, which
17 is actually paid the moment the client sends the money
18 to settle the invoice. You know, so unless Telekom
19 Austria paid us the, I don't know, 7 million Euro
20 advisory fee, of which 700,000 would go to Mr. Marsoner
21 a month later, okay. But first the cash came in.

22 Q. Okay.

23 A. Okay. So --

24 Q. Let me ask you, you said the agreement is
25 dated July 24, 2002?

1 A. Yes.

2 Q. At this point had Lehman acquired the shares, the

3 Formula 1 shares?

4 A. Yes.

5 Q. Okay.

6 A. I think so. I go without -- because I can't use my

7 notes.

8 Q. Okay.

9 A. It is public information.

10 Q. Okay, I will look it up. I want you to base it on

11 what you remember.

12 A. Yes. On what I remember, yes.

13 Q. Okay so --

14 A. But we were doing fixed income, legal troublemaking

15 work.

16 Q. Okay.

17 A. So it didn't need a senior adviser to say on this

18 article of association in Guernsey we actually have the

19 right to do this and therefore, you know, and start.

20 That was really Sherratt and the two Patricks who would

21 say we have a right to verify the accounts, we have

22 a right and we would exercise any right we had until we

23 were able to modify.

24 Q. Okay. So Formula 1 wasn't added to this agreement?

25 A. No, because at that point it was not really part of

1 the core business of my division, was advisory. Seeking
2 new paid assignments to provide intelligence, solutions
3 and so on.

4 Q. Okay.

5 A. And you see the nature of these engagements, one is
6 a telecom deal, the other is a financial institution,
7 both in Austria. And we didn't have any senior Austrian
8 after Mr. Marsoner retired from full service and
9 therefore I retained his services.

10 Q. Okay did. Dr. Marsoner ask for Formula 1 to be
11 added to this agreement?

12 MR. JOHNSON: Objection. Form.

13 A. He probably did in that sense. But he was probably
14 told there was nothing tangible and unless JP Morgan and
15 us had a budget at the corporate level, because there
16 wouldn't be investment banking pay out of goodwill for
17 the mistake of another division, so we were servicing
18 this but I didn't have a budget to -- in fact I would go
19 to Peter Sherratt and say legal, we need this, because
20 the expenses would be billed upstairs, he sat on the
21 floor above me.

22 Q. Okay.

23 A. So my division was not even paying for the travel
24 to go and see Formula 1 and so on, because we didn't
25 have a matching revenue.

1 Q. Okay. So if Dr. Marsoner had asked would you be
2 the person that he would have asked?

3 MR. JOHNSON: Objection. Leading.

4 A. For the advisory side, yes.

5 Q. Okay. Do you recall whether he asked you to add
6 Formula 1 here? Even though I understand that it
7 wouldn't be appropriate did, he ever ask you?

8 MR. JOHNSON: Objection. Form.

9 A. I think he did --

10 Q. Okay.

11 A. -- say "can I work on Formula 1?" and I said it
12 isn't a profit center for me, so what we have do is
13 reach an understanding, it is a consortium. We have
14 a few pooled expenses because for example legal we were
15 sharing with the three banks. So any expense, we only
16 had 25 percent of the loan. So with that we didn't pay
17 for anything 100 percent, because it would have been
18 disproportionate.

19 Q. Mm-hm.

20 A. So I said don't even bother with the Germans,
21 because they didn't agree to anything. But at least
22 with JP if I get them in, I will speak about it
23 internally and see if we can add it. Maybe it wouldn't
24 have been part of this, because this was one of our
25 companies in advisory, but we would have done something.

1 As it happens, it was kind of blocked.

2 Q. Okay.

3 A. I think I still retained some advice on Formula 1
4 specifically, not because I wanted to short change
5 Thomas in any way, but because I was still paying him
6 a retainer of 200,000, which covered, as you can see in
7 the agreement, whatever he agreed to provide, you know.
8 Even without, you know, in the normal course of
9 business. But not high intensity thing. But he did
10 provide intelligence on this Concordia agreement which
11 was the break out of the teams create their own
12 Formula 1.

13 Q. And the Concorde agreement, just to clarify, that
14 was later on, that was in 2008?

15 MR. JOHNSON: Objection. Leading.

16 A. It started already. The moment the banks
17 repossessed, and so on, as you can imagine, the teams
18 revisited their contribution in because they were losing
19 money in Formula 1, and Formula 1 it became apparent was
20 making money, so they started to wonder whether, you
21 know, something could be renegotiated. First they went
22 to Bernie and then they sent Goldman Sachs our way, as
23 if we could have done, not that we were interested in
24 paying them more, but even if we did agree to pay them
25 more we did not have the tools to change the agreements

1 because we realized that we had some negative powers but
2 not positive powers to tell Bernie what to do.

3 Q. Okay.

4 A. So that is why we didn't go for immediate sale, we
5 didn't do anything, because we had little to sell. We
6 had an economic interest in Formula 1. Without even the
7 ability to distribute dividends.

8 Q. Okay.

9 A. To force the distribution of dividends.

10 Q. Okay. Let us look --

11 A. So he did some advisory things, covered by this,
12 and, you know, to be officialized in a different way.

13 Q. And you paid Dr. Marsoner, Dr. Marsoner was paid
14 a retainer for this 2002 agreement?

15 A. He was paid for the agreement and the agreement
16 reflects the services.

17 Q. Do you know if there was ever an allotment made in
18 Lehman's revenues for payment to Dr. Marsoner for
19 Formula 1?

20 MR. JOHNSON: Objection. Leading.

21 A. I have no idea.

22 Q. Okay. Let us look --

23 A. Because the accounting was completely separate from
24 the banking division.

25 Q. Okay. So let us let's take a look at the 2004

1 agreement. Would that be exhibit 6?

2 THE COURT REPORTER: Yes.

3 (Exhibit Pignatti 6 marked for identification)

4 Q. This agreement was also exhibit C to Dr. Marsoner's
5 motion. We will mark it exhibit 6. Just for the record
6 this agreement also begins in the middle, it is page 64,
7 just so we are clear. It is dated February 13, 2004 and
8 the agreement is between Thomas Marsoner and Lehman
9 Brothers Europe Limited, do you see that?

10 A. Mm-hm, yes.

11 Q. Okay. You, as you testified earlier, also
12 negotiated agreement, correct?

13 A. Yes.

14 Q. Who else was involved in the negotiations?

15 A. On this one I think it was just myself and then
16 I was liaising with or reporting to the executive
17 committee for investment banking who was made aware of
18 all, I mean I wouldn't have a session just on the
19 Marsoner agreement, but we would go through, you know,
20 the budgeting and February sounds like a classic date in
21 investment banking as bonuses are paid as of 31 January.
22 So in February you finalize the budget for the year and
23 you put in everything and I probably had, you know, the
24 approval for this and all of the other mandates because
25 they were annual so we got them all rolled over and then

1 agreed.

2 Q. Mm-hm.

3 A. And not exceeded. So it was the COO of investment
4 banking.

5 Q. Okay. What about William McKeown?

6 A. McKeown?

7 Q. McKeown.

8 A. He is the equivalent of Marco Roggero in New York.

9 Q. Okay.

10 A. So the way New York used Marco Roggero as chief
11 operating of investment banking so that they would then
12 do the budget for the two, because we were completely
13 separate from the US. So they just added everything up
14 and made sure, for example, that if we paid this kind of
15 money to the European advisers, the Americans got
16 something similar.

17 Q. And Graham Wilson?

18 A. Graham Wilson was on the finance side. So there
19 was, you know, it is 350 people in investment banking
20 Europe. And they did everything, and I was also a line
21 manager. I used to get mandates, execute them and so
22 on, and do this, supported by a lot of people.

23 Q. Okay. Do you know if Tom Marsoner ever asked you
24 -- before we get there, let us look at section 3 of this
25 agreement. So we are looking at section 3 of exhibit 6.

1 A. Yes.

2 Q. It is titled "compensation payable to the

3 consultant", correct?

4 A. Yes.

5 Q. Section 3 lays out how much Dr. Marsoner would be

6 paid under the terms of this agreement, correct?

7 A. Absolutely. And you will find that, in terms of

8 set up, identical to the previous one with a fixed

9 amount which has now been reduced.

10 Q. Mm-hm.

11 A. And I don't recall whether we didn't do well the

12 year before so they cut my budget overall or Austria was

13 less interesting, you know, these things depended on

14 many things.

15 Q. Mm-hm.

16 A. Then you have the identified transactions.

17 Q. And Formula 1 is not identified in any of these

18 paragraphs, correct?

19 A. No.

20 MR. JOHNSON: Objection.

21 Q. Do you recollect whether Dr. Marsoner requested to

22 be added to this agreement?

23 MR. JOHNSON: Objection.

24 A. I do not, I do not remember.

25 Q. Your role in this agreement, as in the 2002, was to

1 talk, to go back and forth with Marsoner with the

2 agreement, correct?

3 MR. JOHNSON: Objection. Leading.

4 A. Back and forth in the sense that pretty much

5 I would be on, you know, I have long conversation was

6 the team on each of the projects, okay, some of which

7 I was directly involved, others I was not. I would form

8 an important opinion and then I would do one session

9 with him, maybe for an hour, and tell him what was on

10 offer. It is not that I was in a position where the

11 world would end, you know, without Dr. Marsoner.

12 Q. But he would review a draft and provide you

13 comments, right?

14 A. Absolutely.

15 MR. JOHNSON: Objection. Leading.

16 Q. And did he ever request that Formula 1 be added to

17 the agreement?

18 MR. JOHNSON: Objection.

19 A. I do not remember. In many cases we do the meeting

20 with Marco Roggero and Graham Wilson and so on, and then

21 I say okay, done, next and then they would make sure, do

22 the back and forth, not even with me, you know, up to

23 or, and/or, these things I did not deal with.

24 Q. Right. But would they communicate with

25 Dr. Marsoner about the agreement?

1 A. Yes, they would, directly. Johari as well.

2 Q. Okay. If Dr. Marsoner had requested that Formula 1
3 be added to the agreement would they bring that request
4 over to you?

5 MR. JOHNSON: Objection. Leading.

6 A. He wouldn't ask them. They wouldn't even know what
7 Formula 1 was.

8 Q. So he would ask you?

9 A. It would have to be me. I would speak to the
10 various teams and so on. The COO of finance and so on
11 just worked, taking for granted that these were the
12 transactions and that was the economics, and then making
13 sure the contract was correct, the dates were right and
14 so on, but he wouldn't negotiate on, you know,
15 situations. Everything was covered by high
16 confidentiality in some cases. Only I and Marco Roggero
17 had the names of the companies for which we were
18 engaged.

19 Q. Okay. But you don't recall him asking you that, to
20 add Formula 1?

21 MR. JOHNSON: Objection.

22 A. I don't recall, that doesn't mean he didn't do it.

23 Q. That is okay. Okay, so Dr. Marsoner also executed
24 similar agreements in 2006 and 2007 with Lehman Brothers
25 Europe, correct?

1 wouldn't send me back a signed copy.

2 Q. Okay. We would, to the extent that Dr. Marsoner
3 has a copy, this agreement if you flip through the pages
4 is cut off on the bottom on almost every page.

5 A. Mm-hm.

6 Q. We would request a copy that is not cut off. Thank
7 you, Mr. Pignatti.

8 So I want to move away from these agreements
9 a little and talk about BAWAG.

10 A. Mm-hm.

11 Q. You testified earlier that this was an investment
12 banking transaction that took place in 2006, correct?

13 A. Correct.

14 Q. And Dr. Marsoner advised Lehman Brothers Europe on
15 Cerberus' acquisition of BAWAG?

16 A. Absolutely.

17 Q. Is that right?

18 A. Yes.

19 Q. And Lehman Brothers Europe agreed to pay Marsoner
20 for his assistance with BAWAG?

21 A. Yes.

22 Q. Correct.

23 A. A percentage of the advisory fee. So just to
24 clarify his role, he was an adviser to Lehman Brothers
25 in the sense that we were paying him and we had signed

1 a contract with Cerberus to provide advisory service to
2 Cerberus. In reality, he was interacting directly with
3 Cerberus.

4 Q. Okay, okay. And it was typical to pay an adviser
5 a percentage of those advisory --

6 MR. JOHNSON: Objection. Leading.

7 A. In investment banking, yes.

8 Q. Okay. Let us look at another exhibit. It is
9 Lehman LEH 203, is the Bates number. This may have been
10 marked during Sherratt's deposition, I don't recall.
11 But we will mark this as exhibit 8.

12 (Exhibit Pignatti 8 marked for identification)

13 Q. Mr Pignatti, this is an email from you to David
14 Stonberg. Michael Odrich and Anthony Tutrone are CC'd
15 on the email?

16 A. Mm-hm.

17 Q. It is dated May 24, 2007 and the subject line is
18 "BAWAG IBD fee", do you see that?

19 A. Yes.

20 Q. What is IBD?

21 A. Investment banking division.

22 Q. So these are the investment banking fees you were
23 referring to?

24 A. Er, there is --

25 MR. JOHNSON: Objection. Leading.

1 A. It is so small I am trying to decipher the text,
2 and I will answer in a second.

3 Q. Okay.

4 A. Yes, I do remember the whole thing. It explains
5 a bit how we work. So this was me --

6 Q. Mm-hm.

7 A. -- writing to people on the principal side, okay,
8 those responsible for the Lehman Brothers funds. By
9 then I had joined them, so this was like a flashback,
10 saying to them I had entered on behalf of the investment
11 banking division into an advisory contract, which you
12 have seen, which basically spells out exclusively the
13 sharing of this adviser on the advisory fees. In
14 addition, this person was instrumental to getting other
15 pieces of the bank, including yours, involved in
16 a transaction that closed. So here you find Stonberg is
17 the head of co-investments, because the co-investment
18 fund put money with Cerberus in the BAWAG deal.
19 Mike Odrich was the American head of all of the funds
20 and Anthony Tutrone was his deputy. So what I am asking
21 them is to accept, you know, to pay a fee to
22 Mr. Marsoner to for bringing in other parts of the bank.
23 So it was not included. I wouldn't have paid it out of
24 my investment banking budget, because I didn't
25 receive -- you know, plus at that point they had made

1 an investment, it wasn't even clear. It didn't turn out
2 to be a good investment, either, no. But it was common
3 not to utilize, because Marsoner couldn't say "you know
4 what, there are many funds around the world. I am
5 interested in keeping the relationship with Cerberus,
6 frankly, why should I bother alerting the Lehman funds
7 of the opportunity, inviting them to Austria, doing the
8 management presentation and so on", which he did.

9 Q. Mm-hm.

10 A. And they, I think, decided to pay something less
11 than this, but they did pay him something. That is what
12 I was referring to before. So I would do this before
13 the transaction closed to make sure that I wasn't
14 misrepresenting and the adviser felt cheated because he
15 had done extra work and so on. This I did with every
16 other division, including head office upstairs, you
17 know. So if there was something and I was using
18 an adviser who was paid by investment banking, I would
19 make sure that they wanted to chip in or I would say
20 candidly to the adviser, you know what, they don't
21 really think you are adding value so you won't get paid.
22 Do what you want but don't come back to me.

23 Q. Okay. You didn't send a similar email seeking
24 approval of Dr. Marsoner's payment for Formula 1?

25 MR. JOHNSON: Objection. Leading.

1 A. No I did not. Although I did convey the
2 information and things, but then it was no longer my
3 responsibility to even sign these agreements with him.
4 I was no longer the nominated person with whom he had to
5 get everything approved. So apart from the fact that we
6 had known each other for a long time and so on, I wasn't
7 going to step in and create a mess by having someone who
8 was running another division, who was making agreements
9 on services, it was too big an organization for that.

10 Q. Okay, so you weren't the guy who could approve
11 payment to Marsoner on Formula 1?

12 MR. JOHNSON: Objection. Leading.

13 A. Not after, you know, the advisory services were
14 rendered, but for advice on whether to sell a principal
15 position on inherited from a bad loan. In selling it
16 who was in investment banking or the funds not exposed
17 to the asset, say here is a million. What I would have
18 done is I would have conveyed the information to Tom
19 Bernard, you know, and the people who had to make
20 a decision, and to the best of my knowledge, they did
21 take up --

22 Q. Okay.

23 A. -- the information. They didn't say sorry, we
24 don't know who this guy is, we don't care what he says
25 and so on. I kind of left it to them and said this is

1 a credible adviser that we have had for a long, long
2 time and this is his opinion. And to the best of my
3 knowledge that opinion was not thrown away and everybody
4 said you know, we know exactly what is happening and we
5 have decided to sell and so on.

6 Q. But to your knowledge was payment to him, payment
7 of ten percent of Lehman's revenues on Formula 1,
8 approved?

9 MR. JOHNSON: Objection. Form.

10 A. I have absolutely no idea. My own impression is
11 that 10 percent is more of an advisory type of agreement
12 when you are sharing revenues. In this particular case
13 I wouldn't call the sale of Formula 1 a revenue, you
14 know, in the sense that we had not been repaid
15 300 million loan for 2002 to 2006, 8 years of interest
16 accrued and so on.

17 Q. Mm-hm.

18 A. So it wasn't -- you know, it sounds to me like,
19 well, first of all it would be very difficult to define
20 on Formula 1 the gain.

21 Q. Okay.

22 A. What you can do is a first derivative of the gain
23 and say had we sold we would have made less than had we
24 not sold, and therefore this is the implied gain. But
25 in absolute accounting terms it would have been a much

1 more complicated exercise. So I doubt that -- a fixed
2 amount of what?

3 Q. Right, okay. So let us talk about Formula 1 in
4 2006. We are going to jump one year head, okay?

5 A. 6.

6 Q. Formula 1 had refinanced its debt in 2006, that's
7 correct?

8 MR. JOHNSON: Objection. Leading.

9 A. Yes.

10 Q. There was a bond offering in 2001 by Formula 1?

11 MR. JOHNSON: Objection. Leading.

12 A. I believe so. This was by then completely out of
13 my domain. I mean I never did fixed income, so the bond
14 issue would be the fixed income.

15 Q. But it was pretty public, the bond offering?

16 A. Sure.

17 MR. JOHNSON: Objection. Leading.

18 Q. And that bond offering resulted in dividends being
19 paid out to shareholders of Formula 1?

20 MR. JOHNSON: Objection. Leading.

21 A. Sure it was a --

22 Q. We established earlier that Lehman Commercial Paper
23 was a shareholder at that point?

24 MR. JOHNSON: Objection. Leading.

25 Q. Yes or no?

1 and then we arrive to this.

2 Q. Okay. So did you have any conversations with
3 anyone other than Dr. Marsoner about his request prior
4 to finalizing the letter?

5 MR. JOHNSON: Asked and answered.

6 A. Magnoni.

7 Q. What did you discuss with Magnoni?

8 A. No, he asked me what I recalled, whether we
9 recalled the same thing and so on, because he was also
10 lost in the decades; what happened? When did we
11 repossess? Because he was following it from the outside
12 he couldn't remember anything, the names of the people
13 involved, who was who. And he said, you know, this is
14 going to be, you know, potentially complicated. He
15 doesn't have anything because he exited Lehman.
16 I bought a business from Lehman, including the servers.
17 He did not, so he was not privy of any of the
18 information.

19 Q. Okay. I think we can move on.

20 You also submitted a letter on Dr. Marsoner's behalf
21 to the joint administrators of Lehman Brothers Europe,
22 correct?

23 A. Dated?

24 Q. I will get it for you.

25 A. Thanks.

1 Q. This document is stamped with LEH 1036. He needs
2 to mark it first and then you will get it right back.

3 (Exhibit Pignatti 10 marked for identification)

4 Q. This letter is dated January 13, 2014, correct?

5 A. Yes.

6 Q. Okay. Is that your signature on the bottom?

7 A. Yes.

8 Q. Okay. This letter was submitted to Daniel
9 Schwarzman, the joint administrator of Lehman Brothers
10 Europe Limited in administration at
11 PricewaterhouseCoopers, correct?

12 A. Yes.

13 Q. Okay. What I would like to do is focus on the last
14 paragraph.

15 A. Mm-hm.

16 Q. You know what, let us start from the beginning.
17 You say:

18 "I, Vittorio Pignatti, Chairman of Trilantic Capital
19 Partners, former head of European M&A and Vice Chairman
20 of Lehman Brothers hereby confirm that ..."

21 And then you lay out three paragraphs.

22 The first paragraph states:

23 "Dr. Marsoner provided at Lehman Brothers' request
24 advice with regard to its investment in F1 and its
25 beneficial realization.

1 "2. The advice was delivered not only in emails but
2 also in oral discussions with Lehman staff, including
3 myself.

4 "3. The advice was intended to be rewarded by
5 Lehman Brothers on the basis of the beneficial outcome
6 of steps taken or omitted to be taken on the basis of
7 the advice."

8 Do you see that?

9 A. Yes.

10 Q. You submitted -- when you said in the third
11 paragraph:

12 "The advice was intended to be rewarded by Lehman
13 Brothers."

14 You were referring to Lehman Brothers Europe
15 Limited?

16 MR. JOHNSON: Objection. Leading.

17 Q. Correct?

18 A. I was referring in my capacity.

19 Q. To Lehman Brothers Europe Limited?

20 MR. JOHNSON: Objection. Leading.

21 A. As I said before, corporate structures at Lehman
22 Brothers were not my decision as to which company would
23 be rewarding whom.

24 Q. Okay.

25 A. It was not within my domain to say that this

1 adviser will be booked on this P&L and so on, because
2 these were things that were done by other departments.

3 Q. Okay. You submitted this letter to the joint
4 administrators of Lehman Brothers Europe Limited,
5 correct?

6 A. Mm-hm, yes.

7 Q. To support Dr. Marsoner's claim against Lehman
8 Brothers Europe?

9 A. I would assume so, yes.

10 Q. Okay. So Lehman Brothers Europe would compensate
11 Dr. Marsoner for Formula 1, correct?

12 MR. JOHNSON: Objection. Asked and answered.

13 A. Well, Formula 1 was on the books of Europe, which
14 company I was not aware of, but certainly assumed that
15 it was under the umbrella of Lehman Brothers Europe.

16 Q. Well, you were submitting that so that Lehman
17 Brothers Europe --

18 A. Yes.

19 Q. -- would compensate Dr. Marsoner for Formula 1?

20 MR. JOHNSON: Objection. Asked and answered.

21 A. Because the asset was the European asset.

22 Q. I missed it over the objection. Was the answer
23 yes?

24 MR. JOHNSON: Asked and answered.

25 A. Yes.

1 questions.

2 BY MR. JOHNSON:

3 Q. I have a couple of additional questions for you,

4 Mr. Pignatti.

5 Would it be normal to agree on a consultant's

6 success fee before any profits were realized?

7 MS. ALVAREZ: Objection to form.

8 A. If the advice was accepted by the firm, or

9 stipulated, yes. Or, rephrasing the question, did

10 Lehman pay advisers on a percentage of profits in my

11 20 years at Lehman Brothers? The answer is yes, many

12 times.

13 Q. But would they pay before they had received any

14 profits?

15 A. Would they be paid? No.

16 Q. I believe you testified earlier that you know

17 Peter Sherratt?

18 A. Yes.

19 Q. Was Mr. Sherratt aware that success fees were paid?

20 MS. ALVAREZ: Objection to form.

21 A. Absolutely.

22 Q. Even where there was no agreement covering the

23 transaction?

24 MS. ALVAREZ: Objection to form.

25 A. No. I think I said earlier that no payment was

1 ever done unless there was a documented agreement. So
2 especially substantial amounts, which were not just
3 reimbursements of expenses or reimbursements of expenses
4 but anything formulaic, based on a success would be
5 either regulated by a framework agreement to which
6 an addendum would be done, specifying and for this
7 transaction we have decided to pay the following amount,
8 but it would be a documented amount.

9 Q. And on Dr. Marsoner's F1 advice, isn't it true that
10 such an addendum wouldn't have been made until profits
11 were realized?

12 MS. ALVAREZ: Objection to form.

13 A. It could have been done before or after. As you
14 see, an email that was previously shown from me to our
15 colleagues on the fund side, you know, the transaction
16 had already been done. Which is subsequent to the BAWAG
17 advisory. A transaction was also originated for another
18 department in the absence of any sort of documentation
19 and so on, because the marginal cost to the adviser who
20 was working on a bigger transaction to channel a piece
21 of business to our funds would not have probably merited
22 a pre-approval by that division. So the adviser took
23 the risk of sort of notifying his will or his request at
24 a later stage and it was approved. So you have
25 an example of that.

1 Q. And on BAWAG -- let me restate. Is BAWAG included
2 in any of Dr. Marsoner's agreements?

3 A. Yes. But the advisory piece was included in
4 an existing agreement. The amount of my email, the
5 300,000 to 400,000 and so on, would not have been
6 specifically covered in that agreement and therefore
7 I asked the proper department to include it in to a --
8 you know, otherwise I couldn't have paid the amount.

9 Q. Can you point to where Cerberus' acquisition of
10 BAWAG is included in Dr. Marsoner's agreements?

11 A. It is either in the 2004, it should be. I believe
12 it is this BWBG.

13 MS. ALVAREZ: What exhibit are you referring to, so that it
14 is clear?

15 A. I am not looking at an exhibit, but it is the
16 Lehman Brothers advisory contract that I signed, dated
17 13 February 2004.

18 MS. ALVAREZ: Mm-hm. Thank you.

19 BY MR. JOHNSON:

20 Q. Where are you looking at on that?

21 A. I am looking at page 66.3 VII. But I may be wrong
22 and that is not the one and that was done by --

23 Q. That doesn't say Cerberus anywhere, does it?

24 A. No, but I read Cerberus somewhere.

25 Q. Could it be that it wasn't included?

1 A. Well, if we don't find it then it wasn't included.

2 But I remember that he was paid --

3 Q. Right.

4 A. -- and it was officially documented.

5 Q. Okay.

6 A. But I can't remember if it was in one of the
7 contracts, or under the catch all was then included --

8 Q. Okay.

9 A. -- to one of the contracts.

10 Q. So it may have been in a catch all provision?

11 A. Yes, because as I explained, the way that we used
12 to work was to list, you know, normally they would be
13 renewed in February, whatever it was live in February,
14 and I don't remember when BAWAG came out, you know. So
15 it would have been included in the following or sort of
16 an email circulated among the decision makers, saying as
17 per this adviser's retainer, should the BAWAG deal
18 happen X percent will be paid.

19 Q. Okay. Could you refer back to the declaration, of
20 Dr. Thomas Marsoner?

21 MS. ALVAREZ: Which is exhibit 4.

22 BY MR. JOHNSON:

23 Q. Turn to paragraph 8, which I believe we discussed
24 before.

25 A. In 2005 I advised Lehman?

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF

IN RE: LEHMAN BROTHERS HOLDINGS INC., ET AL.,
Debtors.

DEPOSITION OF RUGGERO MAGNONI

VOLUME I

Tuesday, November 17th, 2015

AT: 2:30 p.m.

Taken at:

Hogan Lovells

50 Holborn Viaduct

London

EC1A 2FG

London

United Kingdom

CONFIDENTIAL

Court Reporter:

Chris Lang

Accredited Real-time Reporter

RUGGERO MAGNONI

having been SWORN testified as follows:

BY MR. JOHNSON:

Q. Mr. Magnoni, thank you for appearing here today.

I just wanted to give you a brief overview of what we are going to be doing today. I am going to be asking you some questions and then the attorneys for Lehman Brothers will have the opportunity to ask you some questions. If at some point you don't understand one of the questions, please say so and we will repeat the question, or possibly rephrase it. If you hear either side make an objection to form, you can still answer the question that you have been asked. Do you understand these instructions?

A. I do.

Q. Okay, excellent.

A. Let's see how it works.

Q. So I wanted to start with your work history. When did you begin working at Lehman Brothers?

A. February 1977 and I continued there until the last day, which I think was September 15, 2008. So 35 years. My only job. And then I continued with Nomura from 2008 to 2013, becoming senior adviser afterwards, but I was chairman of investment banking division, EMEA, which is European, Middle East and Africa, for Nomura during

1 those years. I started from the bottom as an associate
2 out of business school in Columbia in 1977, Columbia
3 Business School, and made, you know, up to managing
4 director about ten years later, and then I was appointed
5 as vice chairman of Inc. and vice chairman of
6 International Europe, which were our two operating
7 units, the broker dealers of the group, about around
8 2000 and where about, immediately after. So it is my
9 pride to tell the truth about Lehman Brothers, which is
10 my passion in life, has been my career, my everything.

11 Q. And you said you became vice chairman in 2000?

12 A. I can't remember exactly. I think it was the end
13 of, yes, I think it was around 2000. 1999/2000.

14 Q. And you continued in that role until --

15 A. To the last day. I was vice chairman of both, of
16 Inc. and Europe.

17 Q. Can are we please look at Exhibit 1, the Lehman
18 Brothers 2007 report. Do you see in the bottom
19 right-hand corner it says Marsoner and then there is
20 a number?

21 A. Yes.

22 Q. Please turn to 606.

23 A. 606 is where, I am there, my picture and everything
24 is what you want? Okay, what did you say, 6?

25 Q. 606.

1 A. Right, yes, that is me. There is no picture here.

2 That is me, Ruggero Magnoni.

3 Q. Do you see your name listed under the column that
4 says "other officers"?

5 A. Yes.

6 Q. And is that because you were an officer of Lehman
7 Brothers Holdings Inc.?

8 A. And Europe.

9 Q. And Europe?

10 A. I would say.

11 Q. Okay.

12 A. International, IE. So I was the only one with
13 both, with both titles --

14 Q. Okay.

15 A. -- in the firm. I also had been member of the
16 chairman's strategic committee for a number of years,
17 for Dick, Dick Fuld, and I have a very strong personal
18 relationship, and I was the only European asked to serve
19 in his strategic committee for a number of years. So
20 I had to fly every month to New York for his meetings,
21 where we would consider what to do with the group,
22 until, I would say, it then stopped, I think 2006 it
23 stopped. But it went on for a number of years. So much
24 so I was thinking about buying a flat in New York
25 because I was there every month.

1 Q. Okay. And could I actually ask you to turn back to
2 that page.

3 A. Yes, please.

4 Q. Could you identify the people on this list that you
5 regularly worked with?

6 A. Well, regularly meaning, well, Dick Fuld was my
7 close friend. But all of them, Jasjit Bhattal was the
8 head of Asia. Erin M Callan, not much, but
9 Scott Freidheim is one of my close friends. Dave
10 Goldfarb I worked for, Dave was my boss because I became
11 head of principal investments, the firm's principal
12 investment in Europe, and I was chairman of Italy and
13 I was the most senior banker in the roster. But they
14 asked me to do all sorts of things and I, as long as
15 I didn't have to manage anybody I was free to do what
16 I wanted. I did comply, because I loved it.

17 In Europe I basically reported, at the end,
18 I reported directly to the chairman and COO of Europe.
19 Jeremy Isaacs was my closest friend, he still is. Who
20 else do you want to know. I knew everyone here, Herb
21 McDade, Skip McGee was my partner, head of banking.
22 Andrew Morton I knew very well. Tom Russo I knew very
23 well, that was your senior lawyer and a colleague of
24 yours, one of the most accomplished corporate lawyers in
25 Wall Street. George Walker I didn't know too well, he

1 joined us late. Howard Clark, we went back, those many
2 years. Les Fabuss was one brotherly friend.
3 Stu Francis, as well, Fred Frank, all of those guys,
4 this was my, we grew up together.

5 Q. Okay.

6 A. I spent 35 years there. Felix Robotyn he came
7 from, these were -- Peter Sherratt, we had offices
8 close, one to the other, up on the top floor of Lehman's.
9 No, this was my firm.

10 Q. Sure, okay. We have talked about this a little,
11 but what were your day-to-day responsibilities at Lehman
12 Brothers?

13 A. It moved, right, over the years. Obviously it
14 depends on the years you were focusing on. In
15 1999/2000, for example, I organized the largest, still
16 today, take over deal in Europe. It was the Telecom
17 Italia old style by Olivette. With Vittorio Pignatti
18 I was the senior, and Vittorio was my invaluable
19 partner, and we built the most incredible deal that was
20 ever made. And still today, it is the largest old style
21 cash deal ever done in Europe. And we were really the
22 driving, driver's seat. We had other banks following
23 us, but we did the deal.

24 So what happened in 1999, we did the deal in early
25 1999 and it took me -- I was based in London, because

1 a view and I know that a lot of people at the firm
2 wanted to just sell and get rid of it. It was also the
3 years where we were making truck loads of money so
4 losing 300, having already put them in the books, kind
5 of, in a firm that was making billions, was not very
6 important. So I know this as being a very pointed
7 discussion. Tom Bernard was the person I wanted to tell
8 you before.

9 Q. Okay.

10 A. Tom was really the arbiter in the end of what to
11 do, because he was a very senior guy. He had been the
12 head of credit at the firm. He was retiring, I think in
13 the Rocky Mountains, if I remember, to stay with a kid
14 that wasn't well or something. There was some family
15 reason why. And the firm basically, like with Thomas,
16 said please stay on, even if you are in Aspen, or
17 whatever, Sand Valley, I don't know where it was.
18 Please, stay on, follow some of the difficult deals that
19 we have inherited for the bank, because you know the
20 history, you are the top, senior guy in the firm, stay
21 with us, don't disappear. And from there, I think,
22 I remember calls to the Rockies, and he was formulating a
23 vision of whether to hold or sell. And thank God he
24 decided not to sell, I understand by leaning a lot
25 Thomas' vision, which was the only completely in favor

1 vision within the firm because I wasn't sure what was

2 good to do. I don't know if you asked Patrick

3 Schmitz-Morkramer, he was involved. I don't think any
4 of us were sure what was better for the firm. There was
5 this maniac called Thomas Marsoner who called everyone
6 saying "no, we can't sell, this is going to be the best
7 thing in the world. We can't sell it." I know that
8 there was a threat at that point that the famous
9 Concorde agreement, which was the pact between Ferrari
10 and the other major squads, the teams, and Bernie, who
11 was a very peculiar character, I must say, I know him
12 very well.

13 Q. You are talking about Bernie Ecclestone?

14 A. Yes.

15 Q. Okay.

16 A. Very peculiar, very strange bird. And, you know,
17 you can't trust him, 100 percent, or 50 percent. You
18 really have to have your own opinion. The basic reason,
19 I am really telling you guys because I am strong on it,
20 the thing could have been worth zero or a lot and it
21 depended at that moment on whether the Goldman led
22 group, which was called GPW, Grand Prix World or
23 whatever, was an association of the smaller teams, which
24 excluded Ferrari, which by the way, Ferrari is like 50
25 percent of Formula 1, Luca di Montezemolo, an old friend

1 agreements, Thomas' advisory agreements. You said you
2 were aware of them.

3 A. I was aware that Thomas had been retained by my
4 friend Vittorio, who was a very important person in our
5 firm from 2003. So let me tell you again, because you
6 have to understand. Telecom Italia, we helped to buy
7 Telecom Italia in 1999. In 2001, our man, our guy,
8 Colannino, was booted out by Pirelli and Benetton. We
9 stopped being the bankers to Telecom Italia. And that
10 freed me and Vittorio from a very profitable day to day
11 job, because it was one of the most active M&A clients
12 in the firm. So Vittorio moved back to London, I moved
13 back to London to do, me principal, he M&A. Okay.
14 Germany being our weak point, I knew, and we discussed
15 it with Vittorio, that he wanted to maintain Thomas on
16 board as an adviser. I haven't seen the papers,
17 because, you know, that was his responsibility, but
18 I knew that Thomas continued as our adviser across the
19 board.

20 Q. Do you know how he was paid under those agreements?

21 A. We had a standard deal with our advisers.

22 Q. Okay.

23 A. Which would, may, vary in the proportion, in the
24 share. But it was always if you are a success, we will
25 give you part of what we make. And usually, because

1 I knew afterwards, that was about 10 percent of banking
2 or 20 percent of banking or 10 percent of the firm's,
3 was what normally was given to advisers. It was given
4 to me, too, afterwards.

5 Q. Okay.

6 A. So that is a kind of a standard --

7 Q. Okay.

8 A. -- piece of paper. But no, I have not seen his
9 actual engagement.

10 Q. Okay. Now, are you receiving anything from
11 Dr. Marsoner in exchange for this deposition here today?

12 A. You are offending me. You are kidding, right? No,
13 the answer is no, and I would never have done anything
14 of that type.

15 Q. Why are you providing testimony today?

16 A. Because he asked me to say the truth. He wrote me
17 about two years ago. He asked me about two years ago to
18 say what I knew. And Vittorio also, you know, Vittorio
19 and I are very close friends, really very close. And he
20 told me to say if I knew that what he was saying was
21 true, which I did at that time, in 2004, I think. And
22 then 2015, I was asked to say more clearly, and I did.

23 Q. Okay. Could we hand Mr. Magnoni exhibit 6, please.

24 MS. ALVAREZ: From which deposition?

25 MR. JOHNSON: The first one.

1 MS. ALVAREZ: Sure.

2 THE VIDEOGRAPHER: We are going off the record. The time is
3 3:26 p.m.

4 (3:26 p.m.)

5 (Break taken.)

6 (3:43 p.m.)

7 THE VIDEOGRAPHER: We are back on the record. The time is
8 3:43 p.m.

9 MR. JOHNSON: I have no further questions, thank you

10 Mr. Magnoni.

11 BY MS. ALVAREZ:

12 Q. We do have some questions for you, Mr. Magnoni.

13 A. Please.

14 Q. Thank you again for making yourself available.

15 A. A pleasure.

16 Q. Before I get into the questions, I just want to
17 remind you if you don't understand a question or you
18 don't hear me clearly, just ask. I will repeat it. If
19 you answer a question I will assume that you understood
20 it, alright?

21 A. Yes.

22 Q. Alright. So we are going to mark our first exhibit
23 which is the notice of deposition.

24 (Exhibit Magnoni 1 marked for identification)

25 A. Should I read this?

1 Q. Sure, if you you can take a brief look at it. Have
2 you seen this before?

3 A. I can't remember, I don't remember.

4 Q. Okay. This is the notice of deposition.

5 A. Should I have received this. I can't remember.

6 Q. You probably did receive it, we are hoping you
7 received it, but you are here so it is okay.

8 A. Mm-hm.

9 Q. It is Lehman's notice of deposition to inform you
10 that we have some questions.

11 A. I understand.

12 Q. The last line states that we expect to question you
13 for about 3 hours. We are hoping it should be less?

14 A. I am here for you.

15 Q. Okay. In the beginning of the deposition you told
16 us about your long history at Lehman Brothers. One
17 point I wanted to clarify with you. If you could take
18 a look at what was exhibit 1 to Sherratt deposition that
19 was shown to you. If you could turn back to the page
20 you were looking at.

21 A. 606.

22 Q. Yes, good memory. 606. You can look back where
23 you are listed as "other officer"?

24 A. Yes.

25 Q. You see it says:

1 "Vice chairman of Lehman Brothers Inc..."

2 Correct?

3 A. Yes.

4 Q. And then it says:

5 "... and Lehman Brothers International Europe."

6 A. Yes.

7 Q. Okay. So when you said that you were vice chairman

8 of Inc. earlier, were you referring to Lehman Brothers

9 Inc.?

10 A. Yes.

11 Q. Okay. Thank you.

12 A. That was the colloquial way we differentiated

13 between New York, and international was London.

14 Q. Did you hold a board position at Lehman Brothers?

15 A. No. Of the holding company, you are saying?

16 Q. We will break it up, then. You did not hold

17 a board position at Lehman Brothers Holdings Inc.?

18 A. No.

19 Q. Did you hold a board position anywhere else?

20 A. I think in Europe.

21 Q. Okay.

22 A. And I am not sure, the vice chairman of Inc.,

23 I cannot remember if it also meant -- I don't remember

24 signing papers through Inc., so I doubt it.

25 Q. Okay.

1 A. In Europe, there were two entities and I can't

2 remember now which one I was board member of.

3 Q. Okay.

4 A. Peter Sherratt will know, but I can't remember.

5 Q. Okay.

6 A. We had International Europe, and Europe LBIE and
7 LBE, I can't remember which one I was also a board
8 member of.

9 Q. Okay, that is okay. Thank you. What did you do to
10 prepare for this deposition today?

11 A. Not much.

12 Q. Did you meet with anybody?

13 A. No. I was told look at your history at Lehman
14 Brothers and I did already that when we, when I sent you
15 that note on what happened on the phone. I went back to
16 see what exactly was my position. That was January this
17 year, right. I haven't done much.

18 Q. Okay. You haven't sent me a note.

19 A. No, sorry, sent, what is it, the deposition, the
20 affidavit.

21 MR. JOHNSON: You are referring to the letter?

22 A. Letter, right. What is -- that is what, that was
23 the time when I went back and tried to remember what and
24 if and how. I haven't done much.

25 Q. Okay. Who sent you that, who asked you to go back

1 Q. Have you spoken --

2 A. When you say Formula 1, you are saying Formula 1
3 events of those years?

4 Q. Yes.

5 A. I don't think I even spoke to him about the recent.
6 Again, he doesn't care about Formula 1, for some reason.
7 He is not a petrol head, as we are.

8 Q. Okay.

9 A. He doesn't really care.

10 Q. Okay. Have you discussed with Dr. Marsoner
11 anything about the negotiations of his advisory services
12 agreement?

13 A. Never.

14 Q. Have you discussed with Dr. Marsoner whether he
15 ever requested payment from Lehman for Formula 1?

16 A. No.

17 Q. Have you discussed with Dr. Marsoner whether Lehman
18 ever agreed to pay him for Formula 1?

19 A. No. Because I wouldn't know. I was a bit out of
20 that loop.

21 Q. Okay.

22 A. I actually don't know if they agreed or didn't
23 agree. It would be natural if they agreed to, because
24 that was the way we managed the relationship with our
25 advisers. Everyone was on a small retainer and

1 a success fee.

2 Q. But at that point you were not in the, I think you
3 called it the asset recovery group?

4 A. No I was not.

5 Q. So you didn't know?

6 A. No.

7 MR. JOHNSON: Objection. Leading. I am going to make the
8 same objection you made to Mr. Pignatti's; you haven't
9 provided a foundation that Mr. Magnoni is a hostile
10 witness, and earlier on he testified he was
11 disinterested and in fact loved Lehman Brothers --

12 MS. ALVAREZ: That's right --

13 MR. JOHNSON: -- I believe were his words.

14 A. Sorry, can you say again, please Shane?

15 MS. ALVAREZ: The court reporter can read it back, actually,
16 so he can read you exactly what Shane said.

17 A. What is this, Shane, are you saying what Vittorio
18 said?

19 MR. JOHNSON: He will read you back exactly what I said.

20 A. Okay.

21 THE COURT REPORTER: "Objection. Leading. I am going to
22 make the same objection you made to Mr. Pignatti's; you
23 haven't provided a foundation that Mr. Magnoni is a
24 hostile witness, and earlier on he testified he loved
25 Lehman Brothers."

1 Q. Okay, that is fine. Have you searched any
2 document, for any documents related to Formula 1?

3 A. I don't have any document with me, no, I have
4 tombstones of the deals that we did with Kirch and that
5 is all.

6 Q. Mm-hm.

7 A. No, I haven't searched for anything.

8 Q. Has Doctor Marsoner asked you to search for
9 anything relating to Formula 1?

10 A. No.

11 Q. Okay. I would like to mark the following document
12 the letter he submitted to the court. We will mark this
13 as exhibit 2. Sorry, wrong letter.

14 A. That is Tom Bernard's.

15 (Exhibit Magnoni 2 marked for identification)

16 A. Is that mine?

17 MR. JOHNSON: I can't see it, you can take look at it.

18 BY MS. ALVAREZ:

19 Q. So we will mark this as exhibit 2 to the
20 deposition. We spoke a little earlier about this
21 letter.

22 A. Please.

23 Q. Did you draft it letter?

24 A. What do you mean?

25 Q. Did you prepare the letter yourself?

1 A. Yes.

2 Q. Okay. So Dr. Marsoner didn't send you a draft of

3 the letter?

4 MR. JOHNSON: Objection. Leading.

5 A. Not that I know of. They asked me to say what it

6 was. And I did.

7 Q. Okay. And then did you type this up?

8 A. My secretary, yes.

9 Q. Okay. And you dictated it to her?

10 A. I might have written it on a pad, as I usually do,

11 and given it to her to type.

12 Q. Okay. Let us mark the next exhibit, which is

13 labeled Marsoner 71 to 72. This will be Magnoni 3.

14 Okay. That is an email of Thomas Marsoner to Ruggero

15 Magnoni dated January 14, 2015 and Vittorio Pignatti is

16 CC'd on the letter.

17 (Exhibit Magnoni 3 marked for identification)

18 A. Right.

19 Q. And I will just read the text of the email for the

20 record:

21 "Having discovered along the way that I ought to

22 have a claim in the US for the services I provided,

23 I have decided to pursue a claim in respect of the LB/F1

24 matters. Though it will be a late filing, I believe

25 that I will be able to sustain a claim in the US,

1 primarily since no bar date notice has ever validly been
2 served upon me."

3 Do you see that?

4 A. Yes.

5 Q. Okay. So then the next paragraph states, or the
6 first sentence of the next paragraph:

7 "With reference to our discussions around this
8 I would be very grateful if you could please look at the
9 draft letter attached, check to confirm it reflects
10 reality accurately, mark it up where ever you think it
11 might not, and send a scanned signed version back to
12 me."

13 Did I read that correctly?

14 A. Yes, you did.

15 Q. Okay. And then attached to this email looks like
16 a draft letter. Do you recall receiving this draft from
17 Dr. Marsoner now?

18 A. I recall the first page, the second doesn't really,
19 but it was part of it, so -- January of this year,
20 right?

21 Q. Yes.

22 A. Yes.

23 Q. So --

24 A. So this is what I signed, right.

25 Q. Okay. Well, I was going to ask you. Is this what

1 So, like you said, let's get into the substance. If
2 we look at exhibit 2, which is your letter that you
3 submitted to the court, the beginning of the third
4 paragraph states:

5 "I was involved in Lehman's Formula 1 investment
6 from the outset."

7 Do you see that?

8 A. Yes.

9 Q. Okay. By that, you were referring to your
10 involvement in the Kirch deal?

11 MR. JOHNSON: Objection. Leading.

12 A. That is the investment that led us to obtain a 15
13 percent in the Formula 1 company, yes.

14 Q. Okay. Because the Formula 1 shares were pledged as
15 collateral?

16 MR. JOHNSON: Objection. Leading.

17 Q. So when Kirch -- you didn't answer, sorry, you
18 nodded.

19 A. Yes, I did, I said yes, indeed.

20 Q. Okay.

21 A. You are right.

22 Q. Okay. So when Kirch defaulted, Lehman Brothers
23 acquired the shares in Formula 1?

24 MR. JOHNSON: Objection. Leading.

25 A. All lenders had been given by the Bankruptcy Court

1 of Munich part of the assets that were secured against
2 the loans. So the loan was one. And it was syndicated
3 or split among parts.

4 Q. Okay.

5 A. So we had part of the pot.

6 Q. Okay. So after the default a loan recovery group
7 was assembled?

8 MR. JOHNSON: Objection. Leading.

9 A. Not immediately, but it was informal, I think. It
10 was pretty informal. There was, everyone was interested
11 in helping out, was brought in, like Peter Sherratt, who
12 was the senior level counsel in London. I think after
13 a while, I can't remember, it was so many years ago, but
14 after a while it became an official group. In the
15 beginning it was very spontaneous.

16 Q. Okay.

17 A. We were trying to get our money back.

18 Q. Okay. And Tom Bernard, was he part of that group?

19 A. Not at the beginning.

20 Q. Okay. When --

21 A. I can't remember. I don't have a recollection of
22 when Tom was involved, but it was a very, very senior
23 guy in the firm. So all of us were involved.

24 Q. Right.

25 A. It is not like in a commercial bank. That was

1 particular year, so it was so big that quite a big
2 number of people were involved, but I can't remember.

3 Q. Okay. Now, at this point you were not involved in
4 the day to day with regards to Formula 1?

5 MR. JOHNSON: Objection. Leading.

6 A. At that point I was, in that point I was. As
7 I said, slowly new people were added and only after, as
8 I said, I think, it is taped, I believe one year later
9 I was asked by the firm, by Jeremy and Dick, to loosen
10 up a bit, leave it to the guys in the recovery to try to
11 get the money back, because it was not a good use of my
12 valuable origination time.

13 Q. Okay. Let's take a look at the last sentence in
14 the letter you submitted to the court. It says:

15 "It was well understood by the Lehman decision
16 makers that Dr. Marsoner's fees normally amounted to 10
17 percent of firm's revenues."

18 Do you see that?

19 A. Yes.

20 Q. Who did you mean by Lehman decision makers?

21 A. The ones that I have told you before, anybody --
22 when we do, when we decided to have advisers we knew
23 that there was a share. The normal share of the firm
24 was 10 percent. Now, 10 percent gross, 20 net, I don't
25 know. But there was an understanding that to have

1 advisers and finders there was a standard agreement, to
2 tell you the truth, around investment banking in Wall
3 Street and the City. Particularly at Lehman, we had
4 a 10 percent approach. So it was well known by everyone
5 from Jeremy and Roger Nagioff and I am sure, I can say
6 myself, that that was the norm and therefore was pretty
7 well understood by everyone.

8 Q. Did you negotiate any consultancy agreements for
9 any advisers?

10 A. Including mine, yes.

11 Q. Did you negotiate, were you involved in the
12 negotiations of Dr. Marsoner's?

13 A. No.

14 Q. So you don't know if he was ever retained for
15 Formula 1?

16 A. I don't know.

17 MR. JOHNSON: Objection. Leading.

18 A. I assumed, like everybody else, that if he was
19 working willingly with us, and Vittorio was the entry
20 point of that negotiation, that normally would have had
21 -- I didn't know.

22 Q. Did you ask anyone whether Lehman would pay
23 Dr. Marsoner?

24 A. Not at all.

25 MR. JOHNSON: Objection. Leading.

1 Q. Do you know if anyone told Dr. Marsoner that he
2 would be paid 10 percent?

3 A. No.

4 MR. JOHNSON: Objection.

5 A. I don't know of anyone.

6 Q. Okay. I would like to mark the next exhibit,
7 please. Actually, it was marked at the last deposition.
8 We can use the previous numbers, the Marsoner
9 declaration. It was previously marked as Pignatti 4.
10 You can look at it, I have a copy. Thank you, this is
11 a declaration of Dr. Thomas Marsoner submitted in
12 support of his motion. It was previously marked it
13 Mr. Pignatti's deposition as exhibit 4. Have you seen
14 this document before?

15 A. I am not sure. I am not sure I have read this.

16 Q. Okay. I am going to point you to a particular
17 paragraph. If you can look at paragraph 8 which is on
18 page 2.

19 A. Yes.

20 Q. I am just going to read it for the record. It
21 states:

22 "In 2005, I advised Lehman in my role as Senior
23 Adviser both in emails and in telephone conversations to
24 continue Lehman's investment in F1, which service
25 I explicitly provided in exchange for 10 % of Lehman's

(4:20 p.m.)

(Break taken.)

(4:26 p.m.)

THE VIDEOGRAPHER: We are back on the record. The time is

4:26 p.m.

BY MS. ALVAREZ:

Q. Okay, I would like to mark another document as
an exhibit. I have lost track of the numbering.

THE COURT REPORTER: 4.

Q. 4. This is a letter dated January 13, 2014.

(Exhibit Magnoni 4 marked for identification)

A. Right, that is what I was referring to before.

Q. From Mr. Magnoni to Daniel Schwarzman Esq joint
administrator of Lehman Brothers Europe Limited, the
Bates range is LEH 1037 to 1038. So Mr. Magnoni, is
this the letter you were referring to earlier?

A. Yes, indeed.

Q. This is the letter that you submitted to the joint
administrators of Lehman Brothers Europe?

A. Right.

Q. I just want to confirm, is that your signature on
the bottom?

A. Indeed.

Q. Okay. I am just going to read the body of the
letter for the record:

1 "I Ruggero Magnoni, senior global adviser to Nomura,
2 former vice chairman of Lehman Brothers Inc., hereby
3 confirm that Mr. Pignatti's letter of today's date,
4 a copy of which is appended to this letter, describes
5 the advisory relationship between Dr. Marsoner and
6 Lehman Brothers on F1 in a way that coincides exactly
7 with my own views of that advisory relationship at that
8 time."

9 A. Right.

10 Q. Okay. And then attached to the letter looks like
11 Mr. Pignatti's letter to the joint administrator of
12 Europe?

13 A. It is.

14 Q. Okay. Just so I understand, your statement was
15 that you agree with the contents of Mr. Pignatti's
16 letter?

17 A. Indeed.

18 Q. Okay. I want to focus on paragraph 3 of
19 Mr. Pignatti's letter. He stated:

20 "The advice was intended to be rewarded by Lehman
21 Brothers on the basis of the beneficial outcome of steps
22 taken or omitted to be taken on the basis of the
23 advice."

24 The advice we are referring to is Dr. Marsoner's
25 advice on Formula 1?

1 A. Yes. I think Vittorio Pignatti refers to that and
2 I interpreted it as such, right.

3 Q. Okay.

4 A. Because what I am saying is that I agree, and
5 I agree to that as being Marsoner's advice on Formula 1,
6 not anything else.

7 Q. Okay.

8 A. It is not clear, but that is what I think it was
9 referring to, at least this was what I thought he was
10 referring to for me to say that he, that my recollection
11 coincides with what he said.

12 Q. Okay. And this letter, you submitted it to the
13 administration for Lehman Brothers Europe, correct?

14 A. That's --er, yes.

15 Q. Okay. And this was to support Dr. Marsoner's claim
16 against Lehman Brothers Europe?

17 MR. JOHNSON: Objection. Form.

18 A. Er, I guess. So the claim of Dr. Marsoner in the
19 administration, right, so --

20 Q. Right. So you submitted this so that Lehman
21 Brothers Europe would compensate Dr. Marsoner for
22 Formula 11?

23 MR. JOHNSON: Objection. Leading.

24 A. No, I am just saying that I concur with
25 Mr. Pignatti's view, that is all.

1 Q. Why did you send this to the administrators of
2 Lehman Brothers Europe?

3 A. Because I was asked to do it. I was sent this and
4 asked whether I agreed or not with it, which I did, and
5 I do, and I will continue doing it.

6 Q. Who asked you to do it?

7 A. I think Mr. Marsoner.

8 Q. What is M&M Capital?

9 A. It is a FCA registered advisory boutique founded by
10 Mr. Marsoner and participated by me as its chairman.

11 Q. You say you are the chairman of M&M Capital?

12 A. Correct.

13 Q. And Dr. Marsoner is the founder of M&M Capital?

14 A. He is the founder and managing director.

15 Q. What does the M&M stand for?

16 A. Well, the theory was Marsoner and Magnoni.

17 Q. So you worked with Dr. Marsoner on a regular basis.

18 A. No, not much, because it was really done to have
19 the basis for a potential future activity which we never
20 really acted upon. Each of us does personal advice to
21 clients and then, you know, we book through M&M and it
22 keeps the books of the company. So this really was, it
23 was really meant to be a center of potential growth to
24 attract other, which he haven't done yet. But yes, we
25 worked together but the accounts are separate.

1 Q. Okay. You have a joint interest in the success of
2 M&M Capital?

3 A. To tell you the truth, it is not exactly that,
4 because we keep the accounts completely separate. I am
5 glad if he is successful, but it doesn't affect me.
6 Because it is like having two companies with one same
7 name. I don't think you can do that in the States, but
8 certainly you can do it in the UK, I was told, so my
9 clients pay M&M, but the they pay account B, which
10 declares a completely separate set of accounts to the
11 Inland Revenue, and to the FCA, so they are added
12 together but they are not one single entity from
13 an economic point of view. In theory, one of the two
14 can do nothing and the other do very well and one is not
15 affecting the other.

16 Q. When did you start M&M Capital?

17 A. A couples of years ago. Between -- two years ago.

18 MS. ALVAREZ: Can we just go off the record for a moment?

19 MR. JOHNSON: Are you almost done?

20 MS. ALVAREZ: Yes.

21 MR. JOHNSON: Okay.

22 THE VIDEOGRAPHER: We are going off the record. The time is

23 4:33 p.m.

24 (4:33 p.m.)

25 (Break taken.)